

Terms & Conditions for Participating Oklahoma Providers

PROVIDER NAME: _____
ADDRESS: _____

TERMS AND CONDITIONS

THESE TERMS GOVERN PROVIDER'S USE OF eRECOVERY, eINTERVENTION, & eTHERAPY, WHICH ENCOMPASSES THE CONNECTIONS APP FOR PATIENTS OR CLIENTS OF THE PROVIDER ("PATIENT(S)"), THE CHESS DASHBOARD AND COMPANION APP FOR PROVIDER STAFF, eINTERVENTION FOR REFERRALS, ENVOY APP FOR REFERRED INDIVIDUALS, (COLLECTIVELY, "SOLUTIONS"), AND CHESS'S PROFESSIONAL AND TECHNICAL EFFORTS TO PROVIDE THE SOLUTIONS (COLLECTIVELY, "SERVICES"). BY EXECUTING THE ATTACHED BUSINESS ASSOCIATES AGREEMENT AND USING THE SOLUTIONS, PROVIDER AGREES TO THESE TERMS. IF PROVIDER HAS ENTERED OR DOES ENTER INTO ANOTHER AGREEMENT WITH CHESS, THEN THE TERMS OF THAT AGREEMENT CONTROLS WHERE IT CONFLICTS WITH THESE TERMS.

SECTION 1: USE OF SERVICE.

1.1 License. Subject to Provider's compliance with these terms and the law, CHESS Mobile Health, Inc., DBA CHESS Health ("CHESS") hereby grants to Provider a non-exclusive, non-transferable, non-assignable license to access and use the Solutions in North America. The use of the Solutions is limited to eRecovery, eTherapy, and eIntervention, and their components.

1.2 CHESS Intellectual Property. CHESS and its licensors remain the sole owner of all right, title, and interest in the Solutions.

1.3 Restrictions. The Solutions and their structure, organization, source code, and documentation contain valuable trade secrets of CHESS and its licensors, and accordingly Provider agrees not to (and agrees not to allow its affiliates, employees, agents or third parties to): (1) distribute the Solutions to any third party, other than its patients, without consent from CHESS; (2) modify, adapt, translate, or prepare derivative works from the Solutions; (3) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Solutions; (4) decrypt data or extract portions of the Solutions' files for use in other applications; or (5) remove, obscure, or alter CHESS's trademarks, copyrights or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Solutions.

1.4 Business Associate Agreement (BAA). The terms contained in the "Business Associate/Qualified Service Organization Agreement" attached hereto and made a part hereof shall apply to CHESS Health and the Provider (each a "Party" and, collectively, the "Parties").

1.5 CHESS Trademarks. Provider shall maintain the distinctiveness of all the CHESS trademarks and the image of the brand.

1.6 Data. CHESS may not sell or re-purpose Provider's Protected Health Information (PHI). CHESS may de-identify Provider's PHI so long as it is in accordance with Section 164.514(a) of the HIPAA Privacy Rule and solely for the purpose of analytics, benchmarking, or research.

SECTION 2: FEES, SCOPE, TERM, & TERMINATION.

2.1 Fees. The Solutions will be provided at no cost (\$0) to the Provider.

2.3 Term. This Agreement shall commence on the Effective Date in the signature block of the Business Associates Agreement. Either Party may cancel this Agreement at any time, with or without cause, through written notice to the other Party.

2.4 Termination. Upon termination of this Agreement, CHESS will disable Provider's access to the Solutions, whereupon Provider shall notify Provider's patients that the Solutions will no longer be available to them (unless assigned by the Provider to another Provider), and immediately discontinue all use of the Solutions.

SECTION 3: REPRESENTATIONS AND WARRANTIES.

3.1 CHESS makes no representations, extends no warranties of any kind, either express or implied, and assumes no responsibilities whatsoever with respect to the use of the Solutions in Provider's practice or any patient outcomes that may result therefrom.

SECTION 4: INDEMNIFICATION.

Provider will indemnify and hold harmless CHESS and its subsidiaries, affiliates, officers, agents, employees, partners, and licensors ("CHESS Indemnitees") from and against any claim, demand, loss, or damages, including reasonable attorneys' fees (the "Claims"), which is brought against any CHESS Indemnitee regardless of the cause if such Claim arises for any

reason whatsoever out of or related to Provider's content, Provider's use of the Solutions, a third party's access to and use of the Solutions through Provider, including a Patient's access to and use of the Solutions, or Provider's violation of these terms.

SECTION 5: DISCLAIMERS AND LIMITATIONS OF LIABILITY

5.1 THE SOLUTIONS ARE PROVIDED "AS-IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, CHESS DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. CHESS MAKES NO COMMITMENTS ABOUT THE CONTENT WITHIN THE SOLUTIONS. CHESS FURTHER DISCLAIMS ANY WARRANTY THAT (A) THE SOLUTIONS WILL MEET PROVIDER'S REQUIREMENTS OR WILL BE CONSTANTLY AVAILABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (B) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SOLUTIONS WILL BE EFFECTIVE, ACCURATE, OR RELIABLE; (C) THE QUALITY OF THE SOLUTIONS WILL MEET PROVIDER'S EXPECTATIONS; OR THAT (D) ANY ERRORS OR DEFECTS IN THE SOLUTIONS WILL BE CORRECTED.

5.2 CHESS SPECIFICALLY DISCLAIMS ANY LIABILITY FOR ACTIONS RESULTING FROM PROVIDER'S USE OF THE SOLUTIONS. PROVIDER MAY USE AND ACCESS THE SOLUTIONS AT PROVIDER'S OWN DISCRETION AND RISK, AND PROVIDER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO PROVIDER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE USE AND ACCESS OF THE SOLUTIONS.

5.3 UNLESS STATED IN THESE TERMS, CHESS IS NOT LIABLE TO PROVIDER OR ANYONE ELSE FOR: (A) ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE; AND (B) ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER (EVEN IF CHESS HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), INCLUDING THOSE (1) RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FORESEEABLE, (2) BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORTIOUS ACTION, OR (3) ARISING FROM ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH PROVIDER'S USE OF OR ACCESS TO A-CHESS.

SECTION 6: CONFIDENTIALITY AND NON-DISCLOSURE.

Each party acknowledges that the proprietary information of the other party which it knows or has reason to know is considered confidential by the disclosing party ("Confidential Information") ("Discloser"). The receiving party ("Recipient") therefore agrees to maintain such items secret and in confidence for the Discloser, using no less than reasonable care, and shall not disclose any of these items to any persons other than employees of Recipient with a need-to-know, without the prior written consent of the Discloser. Unauthorized use or disclosure of Discloser's confidential information may cause irreparable harm to the Discloser, and the Recipient agrees that the Discloser shall have the right to seek injunctive relief to enforce the terms of this agreement.

SECTION 7: GENERAL PROVISIONS

7.1 Choice of Law and Venue. These terms shall be governed by the laws of the State of New York and each party hereby consents to the jurisdiction of any state or federal court located in the State of New York.

7.2 No Waiver. CHESS's failure to enforce or exercise any of these terms is not a waiver of that section.

7.3 Notice to CHESS. Provider may send notices to the following address: CHESS Health, 333 West Commercial Street, Suite 2500, East Rochester, NY 14445, or via email to finance@chess.health.

7.4 Notice to Provider. CHESS may notify Provider by email, postal mail, postings within the Solutions, or other legally acceptable means.

7.5 Severability. If a term is not enforceable, the unenforceability of that term will not affect any other terms.

Acknowledged: _____ (initial here)



EXHIBIT A – ESCALATION PLAN

Provider may elect to have patients participate in the ‘Connections Daily’ discussion group (adult or adolescent), the team ‘My Team’, as well as other non-private groups which may be available for patients in the Connections App. CHES Health will moderate and audit the Connections Daily discussion group, the My Team wall posts, and other non-private groups, only during regular business hours, defined as Monday through Friday, 8:30 AM to 4:30 PM Eastern Time, excluding holidays.

CHES HEALTH WILL NOT PROVIDE COUNSELING, RECOVERY COACHING, OR ANY CLINICAL ASSISTANCE TO ANY INDIVIDUAL PATIENTS.

In the event CHES Health becomes aware of any inappropriate or otherwise concerning dialogue observed within the Connections App by a patient invited to use the app by the Provider and/or linked to the Provider, CHES Health staff will follow the process below to escalate the issue to the Provider for potential follow-up action. The intent is to ensure the Connections App remains a safe and supportive place for all patients and for the Provider to follow-up with patients regarding any issue. Please review and complete the escalation plan below:

1. In the event CHES Health staff view any messages posted by a patient in the Connections App that are not appropriate (glorifying substance use, showing lack of respect for others, excessive use of expletives), then CHES will delete the message, notify the Provider via the contact options detailed below, and ask for Provider’s recommendation on allowing the patient to remain in the discussion group. CHES reserves the right to remove a patient from a discussion group or team and/or to disable their access to the Connections App without prior approval of the Provider.
2. In the event CHES Health Staff view any messages that may indicate a risk of patient self-harm (expressing thoughts of self-harm, harming others, or intent to relapse/use drugs or alcohol), then:
 - a. CHES will NOT message the patient and will NOT provide clinical or recovery support to the patient
 - b. the message will be deleted
 - c. a call will be placed by CHES to the Provider at the telephone number(s) provided below
 - d. an email will be sent to the Provider at the email address(s) provided below, which will include screen shot(s), whether deleted or not, and whether CHES requires a response
 - e. the event will be recorded in Salesforce, CHES’ customer relationship management system
 - f. CHES reserves the right to remove a patient from a discussion group or team and/or to disable their access to the Connections App without prior approval of the Provider.
3. In the event a patient’s message or wall posts require escalation more than twice within six months, CHES and the Provider will discuss whether to curtail or cancel the patient’s use of the Connections App.
4. Provider agrees to immediately notify in CHES in writing if any of the contact information below changes.

Disclaimer. Provider acknowledges it is solely responsible for any medical decisions, judgments, counseling and actions that the Provider may undertake. The parties agree that CHES and their respective employees, including Engagement Specialists, have no responsibility for any decisions made or actions taken or not taken in rendering medical care, counseling, or treatment to patients using the Connections App.

PROVIDER CONTACT INFORMATION FOR ESCALATION PLAN

Contact #1 – NAME: _____	#2 – NAME: _____
TITLE: _____	TITLE: _____
MOBILE #: _____	MOBILE #: _____
EMAIL: _____	EMAIL: _____

Acknowledged: _____ (sign here)

**EXHIBIT B - BUSINESS ASSOCIATE AGREEMENT (“BAA”)
AND QUALIFIED SERVICE ORGANIZATION AGREEMENT (“QSOA”)**

SECTION 1: DEFINITIONS

- 1.1 The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Notice of Privacy Practices, Protected Health Information (“PHI”), Required By Law, Secretary, Subcontractor, and Unsecured Protected Health Information (“Unsecured PHI”).
- 1.2 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 BAA, shall mean CHES.
- 1.3 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 BAA, shall mean Provider.
- 1.4 HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- 1.5 Qualified Service Organization. “Qualified Service Organization” shall generally have the same meaning as the term “qualified service organization” at 42 CFR Part 2.
- 1.6 Services. “Services” means those specific activities and/or functions for which Provider engages CHES to perform for Provider or on Provider’s behalf as set forth in the Agreement of which this BAA forms a part.
- 1.7 Terms used but not otherwise defined shall have the same meaning as those terms set forth in the Agreement of which this BAA forms a part of.

SECTION 2: OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or Disclosure of PHI other than as provided for by the Agreement;
- c. Report to Covered Entity any use or Disclosure of PHI not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR 164.410;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- e. Make available PHI in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524. If an Individual requests access to his or her PHI, the Business Associate will forward the Individual’s request to the Covered Entity to fulfill;
- f. Make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526. If an Individual requests an amendment, the Business Associate will forward the Individual’s request to the Covered Entity to fulfill;
- g. Maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.528. If an Individual requests an accounting of Disclosures, the Business Associate will forward Individual’s request to the Covered Entity to fulfill;
- h. To the extent the Business Associate is to carry out one or more of Covered Entity’s obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- i. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

SECTION 3: PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 3.1 Business Associate may only use or disclose PHI as necessary to perform the Services set forth in the Agreement of which this BAA forms a part of.
- 3.2 Business Associate is authorized to de-identify PHI and use de-identified PHI in accordance with 45 CFR 164.514(a)-(c).
- 3.3 Business Associate may use or disclose PHI as Required By Law.
- 3.4 Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and Disclosures set forth below.
- 3.5 Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.6 Business Associate may provide Data Aggregation Services relating to the Health Care Operations of the Covered Entity.

SECTION 4: COMPLIANCE WITH 42 C.F.R. PART 2

- 4.1 Parties agree that this Agreement constitutes a Qualified Service Organization Agreement (“QSOA”) as required by 42 CFR Part 2.
- 4.2 Parties agree that, in receiving, maintaining, processing or otherwise using any Part 2 Information received, it is bound by 42 C.F.R. Part 2.
- 4.3 Parties agree that they shall use and disclose Part 2 Information only as necessary to perform the services described in II B and C and related administrative services for the Program or as otherwise permitted by 42 C.F.R. Part 2.
- 4.4 Parties agree that they shall resist efforts in judicial proceedings to obtain access to the Part 2 Information except as permitted by 42 C.F.R. Part 2.
- 4.5 Parties agree to use appropriate administrative, technical and physical safeguards to protect the privacy of Part 2 Information, including maintaining written records in a secured room or locked file cabinet, safe or similar container when not in use. With respect to electronic Part 2 Information, all parties agrees to comply with the standards applicable to electronic health information set forth in the HIPAA Security Rule. See Subpart C of 45 C.F.R. Part 164.

SECTION 5: PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

- 5.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate’s use or Disclosure of PHI.
- 5.2 Covered Entity shall notify Business Associate of any restriction on the use or Disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent the restriction may affect Business Associate’s use or Disclosure of PHI.

SECTION 6: PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except as otherwise permitted by Sections 3.5 and 3.6 of this BAA.

SECTION 7: TERM AND TERMINATION

- 7.1 Term. The Term of this BAA shall be effective as of the Effective Date.
- 7.2 Termination. This BAA shall terminate as set forth in the Agreement of which this BAA forms a part of. Upon termination of this Agreement for any reason, Business Associate will perform its obligations under the HIPAA Rules. Covered Entity’s PHI data will be deleted. Upon request, and at the Covered Entity’s sole expense, Business Associate will provide Provider with requested data at termination.
- 7.3 Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

SECTION 8: MISCELLANEOUS

- 8.1 Amendment. The parties agree to take such action as necessary to amend this BAA from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable laws.
- 8.2 Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as hereafter amended.
- 8.3 Entire Agreement. This BAA constitutes the entire agreement between Provider and CHES regarding their respective obligations under HIPAA. Without limiting the generality of the foregoing, in the event of a conflict between the terms of this BAA and the other terms of the Agreement of which it forms a part or any prior agreement (written or oral) pursuant to which CHES is providing Services, the terms of the Agreement shall be controlling and such conflicting provisions shall be deemed to be amended hereby to the extent necessary to resolve such conflict.
- 8.4 Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.

PROVIDER

Signature: _____
Name: _____
Title: _____
Effective Date: _____

CHES Health

Signature: Ronald Insogna
Name: Ronald Insogna
Title: VP of Finance
Date: _____