

## **BUSINESS ASSOCIATE AGREEMENT**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between PsychHealth, Ltd. ("Covered Entity") and \_\_\_\_\_ ("Business Associate" or "BA").

### RECITALS

Whereas, the Covered Entity must comply with the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic Clinical Health Act ("HITECH") and the corresponding Privacy Rule (45 CFR 160.103 and 164.50) and the Security Rule (45 CFR 160, 162, and 164); and

Whereas, Covered Entity has entered into a Service Agreement dated \_\_\_\_\_ with the Business Associate to provide \_\_\_\_\_ services (**describe type of services: accounting, billing and collection, etc.**); and

Whereas, to provide the service requires access to personal health information, ("PHI") as defined by HIPAA, 45 CFR 160; and

Whereas, HIPAA requires Covered Entity to obtain assurances from the Business Associate about how it will use and protect PHI.

Now therefore in consideration of the mutual promises set forth below, the Parties agree as follows:

1. Knowledge and Compliance with HIPAA. The Parties acknowledge that they are familiar with HIPAA and HITECH and their accompanying regulations and they will act in accordance with those regulations.
2. Use and Disclosures of PHI. BA agrees that it will not use or further disclose PHI other than as permitted or required under this Agreement or as required by law. BA agrees that it will not use or disclose PHI except:
  - (a) For the purposes of performing its services under the Service Agreement.
  - (b) BA may use PHI for its proper management and administration and to carry out its legal responsibilities or as required by law.
  - (c) To provide data aggregation services relating to the health care operations of the Covered Entity.
3. Safeguards for PHI. BA agrees that it will use appropriate safeguards to prevent use or disclosure of PHI. BA shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and

availability of any electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity in accordance with the Privacy and Security Standards.

4. Business Associate Red Flags Rule Warranty. As applicable, BA warrants that it has implemented a Red Flags Program in accordance with the Federal Trade Commission's Identity Theft Prevention Red Flag rule, 16 CFR 681.1 et seq.

5. Reporting Disclosures/Mitigation. BA agrees to report to Covered Entity within 5 business day any use or disclosure of the PHI that is not provided for by this Agreement or the Service Agreement. This includes reporting the patient name, contact information, nature/cause of the breach, PHI breached and the date or period the breach occurred. BA is responsible for all costs related to notification of the individuals of any security or privacy breach. The BA shall state what remedial action will be taken or proposed with respect to the disclosure.

In the event the BA uses or discloses PHI in a manner other than as permitted under this Agreement, the BA will use its best efforts to mitigate the effects of the use disclosure. These efforts will include, but not be limited to, ensuring that the improper use of PHI is discontinued immediately, seeking return or destruction of the improperly disclosed PHI, and ensuring that any person to whom PHI was improperly disclosed will not redisclose the information.

6. Agreements with Third Parties. BA agrees to ensure that any Agent, including a subcontractor to whom it provides PHI will abide by the restrictions and conditions that apply to the Agreement and as required by HIPAA. BA will take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of this Agreement or the law.

7. Accounting of Disclosures. Upon request of Covered Entity, BA shall provide Covered Entity with an accounting of disclosures of PHI regarding an individual in accordance with 45 CFR 164.528. Such record shall include the date of the disclosure the name and, if known, the address of the recipient of the PHI, the name of the individual who is the subject of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure. BA shall make such record available to an individual who is the subject of such information or Covered Entity within 30 days of a request and shall include disclosures made on or after the date which is six years prior to the request which were improper disclosures. The BA does not need to maintain a record of disclosures of PHI: (a) Made for the purposes of (a) treatment, payment or health care operations; (b) To an individual who is the subject of the PHI; or (c) With that a valid consent for release of PHI.

8. Availability of Books and Records. BA agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from or created or received by BA on behalf of Covered Entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA standards.

9. Availability of PHI for Amendment. Upon receipt of a request from Covered Entity for an amendment of an individual's PHI, BA shall provide such information to Covered Entity for amendment and incorporate any such amendments to the individual's PHI.

10. Obligations of Covered Entity. Covered Entity shall notify BA of:

(a) Any limitations in its notice of privacy practices that effect the BA's use or disclosures of PHI.

(b) Any restriction to the use or disclosure of PHI that an individual has requested or Covered Entity has agreed to that would affect the BA's use or disclosure of PHI.

(c) Inform BA of any changes in or revocation of an individual's consent or authorization to use or disclose PHI.

11. Compliance with HIPAA. The Parties agree that whenever necessary it will permit modification of the Agreement so that Covered Entity is in compliance with HIPAA, HITECH and any amendments thereto.

12. Notices: The Parties shall provide notices to each other in writing to:

Covered Entity:  
PsychHealth, Ltd.  
922 Davis Street  
Evanston, Illinois 60201  
847.864.4961

Business Associate:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Term/Termination. This Agreement shall be effective as of \_\_\_\_\_ and continue until all PHI related to the Parties is either destroyed or returned to Covered Entity. Any material breach by the BA that is not cured within sixty days may result in termination of this Agreement.

14. Return of PHI. Upon termination of the Service Agreement, for any reason, the BA agrees that it will return all PHI (without retaining copies thereof) received from, or created or received by BA on behalf of Covered Entity. If returning such PHI is not feasible, BA will destroy all such information.

15. Indemnification. The Business Associate shall indemnify and hold harmless the Covered Entity from and against any and all costs, expenses, claims, demands, causes of action, damages, attorneys' fees and judgments that arise out of or that may be imposed upon, incurred by, or brought against Covered Entity as a result of a breach of this Agreement or any violation of the requirements of HIPAA by Business Associate.

In the event the Covered Entity is required under HITECH to notify individuals that their PHI has been impermissibly disclosed due to a breach of this Agreement, the BA further agrees to indemnify Covered Entity for all reasonable costs, expenses, and fees related to the breach notification.

The indemnification obligations set forth in this Section 15 survive the termination of this Agreement.

16. Interpretation. When there is an ambiguity in the Agreement it shall be resolved to permit Covered Entity to be in compliance with HIPAA and HITECH.

Agreed to on the date first set forth above.

Covered Entity

Business Associate

---

---