

**GARY FRIEDMAN, Ph.D.**

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### **BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE Agreement (this “Agreement”) is entered into on September 1, 2012 by and between **Gary Friedman, Ph.D.** (“Covered Entity”) and \_\_\_\_\_ (“Business Associate”).

**Whereas**, COVERED ENTITY will make available and/or transfer to BUSINESS ASSOCIATE Protected Health Information, in conjunction with any goods or services that are being provided by BUSINESS ASSOCIATE to COVERED ENTITY, that is confidential and must be afforded special treatment and protections.

**Whereas**, the U.S. Department of Health and Human Services (“HHS”) has issued final federal health care privacy regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which regulations are codified at 45 C.F.R. §§160 and 164, governing the privacy and security of individually identifiable health information obtained, created or maintained by certain entities, including health care providers (the “HIPAA Privacy Rule” and the “HIPAA Security Rule”; or collectively, the “HIPAA Privacy and Security Rules”), each as amended by the HIPAA Omnibus Rule and all collectively referred to herein as “HIPAA”; and

**Whereas**, the HIPAA Privacy Rule requires that the COVERED ENTITY enter into this Agreement with BUSINESS ASSOCIATE in order to protect the privacy of individually identifiable health information (regardless of the media on which it is stored, e.g. computer software, paper, fiche, etc.) maintained by the COVERED ENTITY (“Protected Health Information”, or “PHI”) and the HIPAA Security Rule requires that the COVERED ENTITY enter into this Agreement with BUSINESS ASSOCIATE in order to protect electronic PHI (“ePHI”), a subset of PHI included within the term PHI as used herein; and

**Whereas**, BUSINESS ASSOCIATE and its subcontractors, employees, agents and representatives will have access to paper and electronic records containing PHI in carrying out their obligations to the COVERED ENTITY pursuant to one or more agreements for the provision of certain collection, credit and other services to the COVERED ENTITY (all such agreement(s) being referred to as the “Service Contract”); and

**Whereas**, the Parties desire to enter into this Agreement to protect PHI, which Agreement will be

attached to and incorporated into the Service Contract;

**NOW THEREFORE**, COVERED ENTITY and BUSINESS ASSOCIATE agree as follows:

**1) Definitions**

- *Business Associate*. “BUSINESS ASSOCIATE” shall mean \_\_\_\_\_, “COVERED ENTITY” shall mean **Gary Friedman, Ph.D. 2461 Lititz Pike, Lancaster, PA 17601**
- *Individual*. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.502(g).
- *HIPAA Privacy Rule*. “HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Par 164, Subparts A and E.
- *Protected Health Information*. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by BUSINESS ASSOCIATE from or on behalf of COVERED ENTITY.
- *Required by Law*. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.
- *Secretary*. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

**2) Obligations and Activities of the BUSINESS ASSOCIATE**

BUSINESS ASSOCIATE agrees to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- (b) Use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of a use or disclosure of Protected Health Information by BUSINESS ASSOCIATE in violation of the requirements of this Agreement.
- (d) Report to COVERED ENTITY any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) Ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY, agrees to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such information.
- (f) Provide access, at the request of COVERED ENTITY, and in the time and manner designated by COVERED ENTITY, to Protected Health Information in a Designated Record Set, to COVERED ENTITY or, as directed by COVERED ENTITY, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- (g) Make any amendment(s) to Protected Health Information in a Designated Record Set that the COVERED ENTITY directs or agrees to 45 CFR§ 164.526 at the request of COVERED ENTITY or an individual, and in the time and manner designated by COVERED ENTITY.

- (h) Make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY available to the COVERED ENTITY, or the Secretary, in a time and manner requested by COVERED ENTITY for purposes of determining COVERED ENTITY'S compliance with the HIPAA Privacy and Security Rules.
- (i) Document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR § 164.528.
- (j) Provide to COVERED ENTITY, in time and manner designated by COVERED ENTITY, information collected in accordance with (i) of this Agreement, to permit COVERED ENTITY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

### **3) Permitted Uses and Disclosures by BUSINESS ASSOCIATE**

#### **a) General Use and Disclosure Provisions**

Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, COVERED ENTITY as specified in the existing **Contract** September 1, 2012, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by COVERED ENTITY or the minimum necessary policies and procedures of the COVERED ENTITY.

#### **b) Specific Use and Disclosure Provisions**

- Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information for the proper management and administrations of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.
- Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Protected Health Information for the proper management and administration the BUSINESS ASSOCIATE, provided that disclosures are Required by Law, or BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and use or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information had been breached.
- Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information to provide Data Aggregation services to COVERED ENTITY as permitted by CFR § 164.504(e)(2)(i)(B), if this is a function of the BUSINESS ASSOCIATE.

### **4) Obligations of COVERED ENTITY**

- (a) Provisions for COVERED ENTITY to inform BUSINESS ASSOCIATE of Privacy Practices and Restrictions

COVERED ENTITY shall:

- i. Notify BUSINESS ASSOCIATE of any limitation(s) in its notice of Privacy practices of COVERED ENTITY in accordance with 45 CFR § 164.520, to the extent that such limitation may affect BUSINESS ASSOCIATE'S use or disclosure of Protected Health Information.
- ii. Notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect BUSINESS ASSOCIATE'S use or disclosure of Protected Information.

- (b) COVERED ENTITY shall not request BUSINESS ASSOCIATE to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Privacy and Security Rules if done by COVERED ENTITY. Exceptions: **none.**

## **5) Term and Termination**

- a) The Term of this Agreement shall be effective as of September 1, 2012 and shall terminate when all the Protected Health Information provided by COVERED ENTITY to BUSINESS ASSOCIATE, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY, is destroyed or returned to COVERED ENTITY, or, if it is infeasible to return or destroy Protected Health Information, in accordance with the termination provisions in this Section.
- b) Termination for Cause: Upon COVERED ENTITY'S knowledge of a material breach by BUSINESS ASSOCIATE, COVERED ENTITY shall either:
  - i) Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate this Agreement if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by COVERED ENTITY;
  - ii) Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached a material term of this Agreement and cure is not possible; or
  - iii) If neither termination nor cure is feasible, COVERED ENTITY shall report the violation to the Secretary.
  - iv) If there is a breach of BUSINESS ASSOCIATE'S confidentiality, then COVERED ENTITY must inform BUSINESS ASSOCIATE as well as Health and Human Services. A breach means that information has been released without authorization or without legal authority unless COVERED ENTITY can show that there was a low risk that the Protected Health Information has been compromised because the unauthorized person did not view the Protected Health Information or it was de-identified. If BUSINESS ASSOCIATE is self-pay, then BUSINESS

ASSOCIATE may restrict the information sent to insurance companies.

Most uses and disclosures of psychotherapy notes and of protected health information for marketing purposes and the sale of protected health information require and authorization. Other uses and disclosures not described in the notice will be made only with your written authorization. BUSINESS ASSOCIATE must sign an authorization (release of information form) for releases unless it is for purposes already mentioned in this Privacy Notice (such as mandated reporting of child abuse, reporting of elder abuse, reporting of impaired drivers, etc.).

You have a right to receive a copy of your Protected Health Information in an electronic format or (through a written authorization) designate a third party who may receive such information.

c) Effect of Termination:

- i) Except as provided in paragraph (“i”) of this section, upon termination of this agreement, for any reason, BUSINESS ASSOCIATE shall return or destroy all Protected Health Information received from COVERED ENTITY, or created or received from COVERED ENTITY, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall retain no copies of the Protected Health Information.

**6) Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

**7) Injunctive Relief**

Notwithstanding any rights or remedies provided for in this Agreement, COVERED ENTITY retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information by BUSINESS ASSOCIATE or any agent, subcontractor, or third party that received Protected Health Information from BUSINESS ASSOCIATE.

**8) Binding Nature and Assignment**

This Agreement shall be binding on the Parties hereto and their successors and assigns, but neither Party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

**9) Notices**

Whenever under this Agreement one party is required to give notice to the other, such notice

shall be deemed given if mailed by First Class United States mail, postage prepaid, and addressed as follows:

Gary Friedman, PhD  
Liberty Place,  
313 W Liberty Street,  
Suite 228  
Lancaster, PA. 17603  
717-575-7847

## **10) Entire Agreement**

This Agreement consists of this document, and constitutes the entire agreement between the Parties. There are no understandings or agreements relating to this agreement which are not fully expressed in this Agreement and no change, waiver, or discharge of obligation arising under this Agreement shall be valid unless, in writing and executed by the Party against whom such change, waiver, or discharge is sought to be enforced.

## **11) Miscellaneous**

- a) Regulatory References: A reference in this Agreement to section in the HIPAA Privacy and Security Rules mean the section as in effect or as amended.
- b) Amendment: 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 requirements of the HIPAA Privacy Rule and Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- c) Survival: The respective rights and obligations of BUSINESS ASSOCIATE under Section 5 of this Agreement shall survive the termination of this Agreement.
- d) Interpretation: Any ambiguity in this Agreement shall be resolved to permit COVERED ENTITY to comply with the Privacy Rule.

**In Witness Whereof**, BUSINESS ASSOCIATE and COVERED ENTITY have caused this Agreement to be signed and delivered by their duly-authorized representative, as of the date set forth above.

BUSINESS ASSOCIATE:

COVERED ENTITY:

\_\_\_\_\_  
Signature

Print Name and Title

\_\_\_\_\_  
Signature

Print Name and Title