

## **BUSINESS ASSOCIATE AGREEMENT**

(Intended to be an Amendment or Addendum to an Agreement  
For Services Involving the Use, Creation or Transmission of  
Protected Health Information)

This Business Associate Agreement (“Agreement”) effective on \_\_\_\_\_ (“Effective Date”) is entered into by and between \_\_\_\_\_ (the “Business Associate”) and Psychological Associates (the “Covered Entity”).

### **RECITALS**

A. The purpose of this Agreement is to comply with the Standards for Privacy of Individually Identifiable Health Information (“protected health information”) published on August 14, 2002 by the Secretary of the U.S. Department of Health and Human Services (“HHS”) to amend 45 C.F.R. Part 160 and Part 164 (the “Privacy Regulation”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

B. The Covered Entity has requested Business Associate to perform services with the condition that Business Associate agrees to abide by the requirements set forth in the Privacy Regulation.

C. This Agreement sets forth the terms and conditions pursuant to which protected health information that is provided by, or created or received by, the Business Associate from or on behalf of the Covered Entity will be handled.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follows:

1. Services. The Business Associate provides services for the Covered Entity that involve the use and disclosure of protected health information which services are described in Attachment A hereto. Except as otherwise specified herein, the Business Associate may make any and all uses of protected health information necessary to perform its obligations as set forth in Attachment A and/or under the Services Agreement between the parties. Additionally, Business Associate may disclose protected health information for the purposes authorized by this Agreement only (a) to its employees, subcontractors and agents, in accordance with Section 2(d), or (b) as directed by the Covered Entity.
2. Responsibilities of Business Associate. With regard to its use and/or disclosure of protected health information, the Business Associate hereby agrees to do the following:
  - (a) Use and/or disclose the protected health information only as permitted or required by this Agreement or as otherwise required by law;

(b) Report to the designated privacy officer of the Covered Entity, in writing, any use and/or disclosure of the protected health information that is not permitted or required by this Agreement of which Business Associate becomes aware within fifteen (15) days of the Business Associate's discovery of such unauthorized use and/or disclosure;

(c) Use commercially reasonable efforts to maintain the security of the protected health information and to prevent unauthorized use and/or disclosure of such protected health information;

(d) Require all of its employees, representatives, subcontractors or agents that receive or use or have access to protected health information under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of protected health information that apply herein, including the obligation to return or destroy the protected health information as provided under (h) of this section.

(e) Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Secretary of HHS for purposes of determining the Covered Entity's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.

(f) Upon written request, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Covered Entity within fifteen (15) days for purposes of enabling the Covered Entity to determine the Business Associate's compliance with the terms of this Agreement;

(g) Within forty five (45) days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by the subject individual for amendment and accounting purposes of the disclosures of the individual's protected health information in accordance with 45 C.F.R. §164.526 and §164.528;

(h) Return to the Covered Entity or destroy, as requested by the Covered Entity, within fifteen (15) days of the termination of this Agreement, the protected health information in Business Associate's possession and retain no copies or back-up tapes; and

(i) Business Associate agrees to 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.

3. Responsibilities of the Covered Entity. With regard to the use and/or disclosure of protected health information by the Business Associate, the Covered Entity hereby agrees:

(a) To inform the Business Associate of any changes in the form of notice of privacy practices that the Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520 and provide the Business Associate a copy of the notice currently in use;

(b) To inform the Business Associate of any changes in, or withdrawal of, the consent or authorization provided to the Covered Entity by individuals whose protected health information may be used and/or disclosed by Business Associate under this Agreement pursuant to 45 C.F.R. §164.506 or §164.508; and

(c) To notify the Business Associate, in writing and in a timely manner, of any restrictions on the use and/or disclosure of protected health information agreed to by the Covered Entity as provided for in 45 C.F.R. §164.522.

4. Mutual Representation and Warranty. Each party represents and warrants to the other party that all of its employees, agents, representatives and members of its work force, who services may be used to fulfill obligations under this Agreement, are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to fully comply with all provisions of this Agreement.

5. Term and Termination.

(a) Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, unless terminated as provided herein or by mutual agreement of the parties.

(b) Termination. As provided for under 45 C.F.R. §164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement and any related agreement if it determines that the Business Associate has breached a material provision of this Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with fifteen (15) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of the Agreement. If termination is not feasible, the Covered Entity shall report the breach to the Secretary of HHS. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Service Agreement between the parties.

(c) Effect of Termination. 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 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. Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2(h) and 2(i) and 8 shall survive the termination of this Agreement indefinitely.
  
7. Amendment. This Agreement may not be modified or amended, except in writing as agreed to by each party. 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 Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
  
8. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor anything herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.
  
9. Notices. Any notices to be given hereunder shall be made via U.S. mail or express courier, or hand delivery to the other party's address given below as follows:

If to Business Associate: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If to Covered Entity: Psychological Associates  
 600 East Government Street  
 Pensacola, FL 32501

10. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

IN WITNESS WHEREOF, the parties hereto hereby set their hands and seals as of the \_\_\_\_\_ day of \_\_\_\_\_.

IN PRESENCE OF:

Business Associate

\_\_\_\_\_  
 Witness

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Covered Entity

\_\_\_\_\_  
 Witness

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_