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### Business Associate Agreement

This Business Associate Agreement (this "Agreement") by and between John Dorian ("*Covered Entity*") and Psych Select Software, LLC. ("*Business Associate*"), is effective as of 03/19/2024 ("*Effective Date*").

WHEREAS, Covered Entity and Business Associate have entered into an agreement and may in the future enter into additional agreements (collectively, the "Underlying Agreements") whereby Business Associate will provide various items and/or services to Covered Entity or Covered Entity's patients (the "*Services*");

WHEREAS, in the course of providing the Services, Business Associate may create, receive, maintain, or transmit Protected Health Information or Electronic Protected Health Information, as those terms are defined below, on behalf of the Covered Entity;

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and security of PHI and/or ePHI disclosed to Business Associate, in compliance with the administrative simplification provision of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and the regulations issued thereunder, 45 CFR Parts 160, 162 and 164, as amended (collectively, "*HIPAA*");

[IF APPLICABLE] WHEREAS, Covered Entity operates a drug and alcohol treatment program that must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC 290dd-2 and 42 CFR Part 2; and

[IF APPLICABLE] WHEREAS, Business Associate is also a Qualified Service Organization ("*QSO*") under 42 CFR Part 2 and must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

#### I. DEFINITIONS

- a. "*Breach*" means the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of the PHI, and will be determined in accordance with the exclusions and presumptions set forth at 45 CFR §164.402.
- b. "*Designated Record Set*" means a group of records maintained by or for a covered entity that is:
  - i. The medical records and billing records about individuals maintained by or for a covered health care provider;
  - ii. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
  - iii. Used, in whole or in part, by or for the covered entity to make decisions about individuals.
- c. "*Electronic Protected Health Information*" ("*ePHI*") has the meaning set forth at 45 CFR §160.103.
- d. "*Individual*" means the person who is the subject of PHI, and includes a person who is a personal representative under 45 CFR §164.502(g).
- e. "*Required By Law*" has the meaning set forth at 45 CFR §164.103.
- f. "*Secretary*" means the Secretary of the Department of Health and Human Services, or any other officer or employee thereof to whom the authority involved has been delegated.
- g. "*Protected Health Information*" ("*PHI*") has the meaning set forth at 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Business Associate on Covered Entity's behalf.

#### II. OBLIGATIONS OF BUSINESS ASSOCIATE

- a. *Permitted Uses and Disclosures.*
  - i. Business Associate may use and disclose PHI as necessary to provide the Services for, or on behalf of, Covered Entity as specified in the Underlying Agreements, provided that such use or disclosure would not violate HIPAA if done by Covered Entity.
  - ii. *Management and Administration.* Business Associate may:
    - a. Use PHI for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities; and
    - b. Disclose PHI for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities, provided that: (a) the disclosure is Required by Law; or (b) the recipient of the PHI (1) first provides Business Associate reasonable assurances that the PHI will be held confidentially and used or further disclosed only as Required by Law or for the purpose of the disclosure, and (2) agrees to notify Business Associate of any instances of which the recipient becomes aware in which the confidentiality and security of the PHI has been breached.
  - iii. *Data Aggregation.* Business Associate may use PHI for Data Aggregation services related to the Covered Entity's health care operations.
  - iv. *De-Identification.* Business Associate may de-identify PHI in accordance with 45 CFR §164.514(b).
- b. *Limitation(s) on Uses and Disclosures.* Business Associate will not use or disclose PHI except as permitted or required by this

Agreement or as Required by Law, and will comply with any limitations on uses and disclosures to which Covered Entity has agreed and communicated to Business Associate.

- c. *Safeguards.* Business Associate will use appropriate safeguards to prevent use or disclosure of PHI other than as provided herein. With respect to ePHI, Business Associate will comply with the requirements of 45 CFR Part 164, Subpart C.
- d. *Breaches of Unsecured PHI.*
  - i. *Reporting by Business Associate.* Business Associate will report to Covered Entity (a) any use or disclosure of PHI not provided for by this contract of which Business Associate becomes aware; (b) any security incident of which Business Associate becomes aware; and/or (c) any Breach of Covered Entity's unsecured PHI that Business Associate discovers, as required by 45 C.F.R. § 164.410. The timing and content of such report will be consistent with our legal obligations, including the 45 CFR Part 164, Subpart D and applicable state law. This Agreement constitutes ongoing notice to Covered Entity of "unsuccessful" security incidents that do not represent substantial risks to PHI, such as pings on our firewall, unsuccessful log-on attempts, or access to encrypted information without access to a key, and no further reporting is required.
  - ii. *Exceptions to Reporting Obligation.* Notwithstanding the foregoing, Business Associate will not be required to report a Breach to Covered Entity for as long as any such report is subject to a law enforcement delay pursuant to 45 CFR § 164.412.
  - iii. *Determination of Breach.* The parties agree that it will be the Covered Entity's responsibility to determine whether a Breach has occurred, and whether such Breach must be reported to the Secretary, any state authorities, the affected Individuals, or the media.
  - iv. *Reporting by Covered Entity.* If Covered Entity determines that it is obligated to report a Breach attributable to Business Associate to any governmental authority, Individual, or other entity, Business Associate will either, at Covered Entity's election: (a) perform the necessary reporting; (b) assist Covered Entity in all reporting activities; or (c) reimburse Covered Entity for the reasonable costs of such efforts.
- e. *Additional Responsibilities in the Event of Breach.* Business Associate will take prompt steps to limit or avoid the recurrence of any Breach, and take any other corrective action required by federal and state law. Business Associate will mitigate, to the extent practicable, any harmful effect that becomes known to Business Associate as a result of a Breach attributable to Business Associate, or any use or disclosure of PHI by Business Associate that violates this Agreement.
- f. *Use of Agents and Subcontractors.* Business Associate will ensure that any subcontractors that create, receive, maintain, or transmit Covered Entity's PHI on Business Associate's behalf agree to the restrictions and conditions that apply to Business Associate with respect to the PHI and, with respect to any ePHI, agree to comply with 45 CFR Part 164, Subpart C. In no event will any subcontractor provide Covered Entity's PHI to any employee, agent, or other party located in, or with access from, any location outside of the United States.
- g. *Access and Amendment and Accounting of Disclosures of PHI.*
  - i. *Individual Right to Access.* Business Associate agrees it will, within thirty (30) days of a request from Covered Entity, make available to Covered Entity PHI maintained in a Designated Record Set so Covered Entity can meet its obligations in 45 C.F.R. § 164.524 to provide individual access to PHI. To the extent that the Designated Record Set maintained by Business Associate is a duplicate of a Designated Record Set maintained by Covered Entity, Covered Entity will not request access from the Business Associate. The information shall be provided in the form or format requested if it is readily producible in such form or format. reasonable, cost-based fee for copying health information may be charged.
  - ii. *Individual Right to Amendment.* Business Associate agrees it will, within thirty (30) days of a request from Covered Entity, make Designated Record Set available to Covered Entity and will incorporate any amendments to PHI at the direction of Covered Entity as necessary to allow Covered Entity to comply with its amendment obligations as required by 45 C.F.R. § 164.526.
  - iii. *Accounting of Disclosures.* Business Associate agrees it will maintain and, within 30 days of request by Covered Entity, provide Covered Entity the information necessary to respond to an Individual's request for an accounting of Disclosures as required by 45 C.F.R. § 164.528. Such accounting is limited to disclosures that were made in the six (6) years prior to the request. Business Associate will report only those disclosures for which Covered Entity would be required to provide an accounting.
  - iv. If an Individual requests any of the information discussed in Section II.g.i.-iii., above, directly from Business Associate, Business Associate shall forward such request to the Covered Entity in writing within ten (10) business days of Business Associate's receipt of such request and shall take no direct immediate action on the request. Covered Entity will be responsible to determine whether the request should be granted. In any case, Business Associate agrees that it will accommodate an Individual's request for disclosure, amendment, or access only in conjunction with a determination by Covered Entity that the action is appropriate according to 45 C.F.R. 164.526.
- h. If Business Associate is to carry out one or more of Covered Entity's obligations under HIPAA, Business Associate will comply with the provisions of 45 CFR Part 164, Subpart E that apply to Covered Entity in the performance of such obligations.
- i. *Availability of Books and Records.* Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI, including ePHI, created or received pursuant to this Agreement available to the Secretary, for the purpose of determining Covered Entity's compliance with HIPAA as set forth in 45 C.F.R. §160.310.
- j. *Minimum Necessary.* Business Associate will make reasonable efforts to limit the PHI it uses, discloses or requests to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.
- k. *Standard Transactions.* If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate will comply with the applicable requirements of 45 C.F.R. Parts 160-162.
- l. *Data Ownership.* Business Associate acknowledges that Covered Entity is the owner of all PHI and/or ePHI.

### III. OBLIGATIONS OF QUALIFIED SERVICE ORGANIZATION

To the extent that Business Associate is also considered a Qualified Service Organization ("QSO"), with access to protected substance abuse treatment information, Business Associate agrees to the following:

- a. In receiving, storing, processing or otherwise dealing with any protected substance abuse information from Covered Entity, Business Associate is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.
- b. If necessary, Business Associate will resist in judicial proceedings any efforts to obtain access to protected substance abuse information unless access is expressly permitted under 42 CFR Part 2.
- c. Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

#### IV. OBLIGATIONS OF COVERED ENTITY

- a. *Notice of Privacy Practices.* Covered Entity will inform Business Associate of any limitation(s) in Covered Entity's notice of privacy practices that may affect Business Associate's use or disclosure of PHI.
- b. *Revocation of Authorization.* Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI if such changes affect Business Associate's use or disclosure of PHI.
- c. *Restrictions.* Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI to which Covered Entity has agreed if such restriction may affect Business Associate's use or disclosure of PHI.

#### V. TERM AND TERMINATION

- a. *Term.* This Agreement will commence as of the Effective Date set forth above and will continue until the later to occur of (i) termination by either party, (ii) when all of Covered Entity's PHI is returned or destroyed, or (iii) if such return or destruction is infeasible, when protections are extended to the PHI in accordance with Section IV.c. of this Agreement.
- b. *Termination of Underlying Agreement.* Notwithstanding the terms of any other agreement between the parties, either party may terminate the Underlying Agreements (e.g., the agreements related to Business Associate's provision of the Services and/or the use of long-term data storage to Covered Entity) upon a determination that the other party has violated a material term of this Agreement. In such case, the non-breaching party may:
  - i. Provide an opportunity for the breaching party to cure the breach;
  - ii. Immediately terminate the Underlying Agreement if the breach is not cured within the time specified by the non-breaching party, or if cure is not possible; or
  - iii. If neither termination nor cure is feasible, report the violation to the Secretary.
- c. *Effect of Termination.*
  - i. Upon termination of this Agreement, for any reason, Business Associate will return or destroy all of Covered Entity's PHI; provided, however, if such return or destruction is infeasible, Business Associate will notify Covered Entity in writing of the conditions causing such infeasibility, and will extend the protections of this Agreement to the PHI until such conditions are resolved.
  - ii. Whenever Business Associate is required to return or destroy Covered Entity's PHI, Business Associate will notify its subcontractors or agents in possession of such PHI, and require that they also return or destroy the PHI.

#### VI. MISCELLANEOUS

- a. *Disclaimer.* Business Associate makes no warranty or representation that compliance by Covered Entity with this Agreement will be sufficient for Covered Entity's compliance with HIPAA. Covered Entity is solely responsible for all decisions made by Covered Entity regarding the safeguards of PHI and/or ePHI.
- b. *Indemnification.* Each party will indemnify and hold harmless the other party, including its affiliates, directors, officers, employees and agents, from and against any claim, cause of action, liability, damage, cost or expense (including reasonable attorney's fees) arising out of or relating to any impermissible use or disclosure of PHI, failure to safeguard PHI or other breach of this Agreement, by the indemnifying party or any of its affiliates, directors, officers, employees or agents.
- c. *No Third Party Beneficiaries.* Nothing in this Agreement shall confer any rights, remedies, obligations or liabilities, whatsoever, upon any person other than Covered Entity, Business Associate and their respective successors and assigns.
- d. *Modification.* This Agreement may only be modified through a writing signed by the parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with HIPAA.
- e. *Interpretation.* Should there be any conflict between the language of this Agreement and any other contract entered into between the parties (no matter when effective), this Agreement will control. Any ambiguity in this Agreement will be resolved in favor of a meaning that furthers compliance with HIPAA.
- f. *Regulatory References.* A reference in this Agreement to a section in the HIPAA means the section as in effect or as amended.
- g. *Notice to Covered Entity or Business Associate.* Any notice required under this Agreement to be given to Covered Entity or Business Associate will be made in writing to the addresses set forth under the parties' signatures, below.

In witness whereof, the parties have executed this Agreement as of the Effective Date set forth above.

**Covered Entity Address:**  
John Dorian

**Business Associate Address**  
Psych Select Software LLC  
96 Chestnut Ridge Road  
Mills River, NC 28759-8002

**Covered Entity Electronic Signature:**

*John Dorian*

**Electronic Signature Details:**

Signed By: John Dorian [REDACTED]

Date / Time Signed: 19-Mar-24 01:53 PM UTC

Originating IP: 35.148 [REDACTED]

Originating Browser: [REDACTED]

**Business Associate Signature:**



William C. Whitehead, Ph. D.  
CEO, Psych Select Software LLC  
3/19/2024

\* Signed as an authorized agent for John Dorian