

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "BAA") is made by and between Psychoanalyst Services and \_\_\_\_\_, the Covered Entity ("Customer", "You", or "Your"). This BAA governs the terms and conditions under which such Services are provided in compliance with the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act Title XIII of the American Recovery and Reinvestment Act, 2009 (HITECH Act) and regulations promulgated thereunder, as such law and regulations may be amended from time to time (collectively, "HIPAA"). "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. All capitalized terms used herein and not defined shall have the meanings ascribed thereto under the HIPAA Rules.

### 1. Obligations and Activities of Psychoanalyst Services

In connection with the applicable obligations of a Business Associate, Psychoanalyst Services agrees to:

(a) not use or disclose protected health information ("PHI") other than to perform the Services or as permitted or required by law or this Agreement;

(b) use reasonable and appropriate privacy and security safeguards to prevent use or disclosure of electronic protected health information ("ePHI") as provided for by this Agreement and consistent with the requirements of Subpart C of 45 CFR Part 164 with respect to ePHI as determined by Psychoanalyst Services;

(c) report to Customer any use or disclosure of PHI not provided for in connection with this Agreement or performance of the Services, of which it becomes aware, including breaches of unsecured PHI as required by 45 CFR 164.410; provided, that, notice is hereby deemed given for Unsuccessful Security Incidents, defined as a security incident that does not result in the unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, including, without limitation, activity such as pings and other broadcast attacks on Psychoanalyst Services's firewall, port scans, unsuccessful log-on attempts, interception of encrypted information where the key is not compromised, denial of service attacks and/or any combination of the above. This notice shall satisfy any notices required of Psychoanalyst Services to Customer of the ongoing existence and occurrence of Unsuccessful Security Incidents, for which no additional notice to Customer shall be given or required.

Notification of a breach of unsecured PHI under 45 CFR 164.410 will be made without unreasonable delay, but in no event more than sixty (60) calendar days after Psychoanalyst Services's discovery of such a breach and will be delivered to Customer by means selected by Psychoanalyst Services, including via email. Psychoanalyst Services's obligation to report under this Section shall not be construed as an acknowledgment by Psychoanalyst Services of any fault or liability with respect to any use or disclosure of PHI, or security incident or breach related thereto.

(d) if applicable, ensure that, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), any of Psychoanalyst Services's subcontractors that create, receive, maintain, or transmit Customer's PHI on behalf of Psychoanalyst Services agree to restrictions, conditions, and requirements at least as stringent as those that apply to Psychoanalyst Services with respect to such information;

(e) make available protected health information in a designated record set to the Customer as necessary to satisfy covered entity's obligations under 45 CFR 164.524;

(f) maintain and, if requested, make available the information required to provide an accounting of disclosures to the Customer as necessary to satisfy Customer's obligations under 45 CFR 164.528;

(g) to the extent Psychoanalyst Services is to carry out one or more of Customer's obligation(s) under Subpart E of 45 CFR

Part 164, comply with the requirements of Subpart E that apply to the Customer in the performance of such obligation(s); and

(h) make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary, for purposes of determining Customer's compliance with the HIPAA Rules.

### 2. Permitted Uses and Disclosures by Psychoanalyst Services

(a) Psychoanalyst Services will use or disclose PHI only to perform the Services or as permitted or required by law or this Agreement;

i. Psychoanalyst Services may use and disclose PHI for the proper management and administration of the Services or to carry out the legal responsibilities of Psychoanalyst Services, provided, that, the disclosures are required by law, or Psychoanalyst Services obtains reasonable assurances from the recipient of the information that any PHI will remain confidential, be used or further disclosed only as required by law or for the purposes for which it was disclosed to them, and the recipient shall be required to notify Psychoanalyst Services of any instances of which it is aware in which the confidentiality of the PHI has been breached;

(b) If, in the performance of its obligations set forth in Sections 1 or 2, Psychoanalyst Services expends time and materials, Psychoanalyst Services will provide Customer with an estimate of the fee for such time and materials. Following agreement by the parties to such fees, Psychoanalyst Services will invoice Customer, and Customer shall pay Psychoanalyst Services such fees in accordance with the agreed upon estimate and payment terms as invoiced.

### 3. Provisions for Customer to Inform Psychoanalyst Services of Privacy Practices and Restrictions

(a) Customer shall notify Psychoanalyst Services of any limitation(s) in the notice of privacy practices of Customer under 45 CFR 164.520, to the extent that such limitation may affect Psychoanalyst Services's use or disclosure of PHI;

(b) Subject to Section 1(c) above, Customer shall notify Psychoanalyst Services of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Psychoanalyst Services's use or disclosure of PHI

(c) Customer shall notify Psychoanalyst Services of any restriction on the use or disclosure of PHI that Customer has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Psychoanalyst Services's use or disclosure of PHI;

(d) Customer shall not request Psychoanalyst Services to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Customer;

(e) Customer shall implement appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA, and to protect the Psychoanalyst Services Account details from unauthorized access. If Customer obtained access to the Services through a legal entity such as Customer's business, Customer acknowledges and agrees that Customer has expressly granted other users the right to access, control or manage Customer's Psychoanalyst Services Account and User Data (as defined in the Terms), which may include PHI. It is solely Customer's responsibility to ensure Customer has the appropriate business associate agreements in place. If Customer believes there has been unauthorized access to the Customer's Psychoanalyst Services Account or User Data, Customer must immediately notify lecomptec@gmail.com. In addition, Customer shall defend and indemnify Psychoanalyst Services from and against any damages and costs arising from or relating to Customer's failure to implement appropriate privacy and security safeguards to protect Customer's Psychoanalyst Services Account details and User Data backed up with Psychoanalyst Services.

**4. Term and Termination**

(a) Term. This BAA shall terminate on the date the Customers' relationship with Psychoanalyst Services ends.

(b) Termination for Cause. Upon either party's knowledge of a breach or violation of this BAA by the other party, the non-breaching party will require the breaching party to take reasonable steps to cure the breach or end the violation. If the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party, or if no cure or end of violation is possible, the non-breaching party may immediately terminate this BAA upon written notice to the breaching party.

(c) Termination Upon Change in Law. If the Secretary provides guidance, clarification or interpretation of HIPAA or the HITECH Act or there is a change in HIPAA or the HITECH Act such that the service relationship between Psychoanalyst Services and Customer is not considered a Business Associate relationship as defined in HIPAA, this BAA shall terminate and be null and void.

(d) Obligations Upon Termination. Pursuant to the Terms, upon termination of the Services, Psychoanalyst Services will return or destroy all PHI received from Customer, or created or received by Psychoanalyst Services on behalf of Customer; provided, however, that if such return or destruction is not feasible, Psychoanalyst Services will extend the protections of this BAA to the PHI not returned or destroyed and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

**5. Miscellaneous**

(a) Relationship of the Parties. Psychoanalyst Services and Customer shall not be deemed to be partners, joint ventures, agents or employees of each other by virtue of the terms and conditions of this BAA.

(b) Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.

(c) Amendment. The Parties agree to take such action as is 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 law.

(d) Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.

(e) Complete Integration. This BAA constitutes the entire agreement between the Parties and supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly incorporated herein, related to the subject matter of this Agreement. Unless expressly provided otherwise herein, this BAA may not be modified unless in writing signed by the duly authorized representatives of both Parties. If any provision or part thereof is found to be invalid, the remaining provisions will remain in full force and effect.

(f) No Third Party Beneficiaries. Except as expressly provided for in the Privacy Rule, there are no third-party beneficiaries to this Agreement. Psychoanalyst Services's obligations are to Customer only.

(g) Successors and Assigns. Neither Party may assign, delegate, or otherwise transfer, in whole or in part, by operation of law or otherwise, this BAA without the prior written consent of the non-assigning Party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, Psychoanalyst Services may assign this BAA to a successor entity whether by merger, consolidation, sale of substantially all of its assets, license, operation of law or otherwise without Customer's consent. In the case of any permitted assignment or transfer, this BAA will inure to the benefit of and be binding upon the successors, executors, heirs, representatives, administrators and assigns of the Parties hereto. Any attempted assignment, delegation, or transfer in violation of the foregoing will be null and void.

(h) Governing Law and Venue. This BAA and the rights of the parties will be governed by and construed in accordance with Federal law as it pertains to the subject matter. In addition, the provisions contained in the Terms that pertain to governing law, venue and jurisdiction are hereby incorporated into this BAA.

\_\_\_\_\_  
Customer signature

\_\_\_\_\_  
Customer name (please print)

\_\_\_\_\_  
Charles LeCompte, President, Psychoanalyst Services

\_\_\_\_\_  
Date