

Business Associate Agreement

This Business Associate Agreement (the "Agreement") is made and entered into effective as of _____, 20__ by and between Debra K. Sowald, Psy.D., located at: 28 E. Rahn Rd., Suite 105, Kettering, OH 45429 (hereinafter referred to as "Covered Entity") and _____ (hereinafter referred to as "Business Associate"). In consideration of the mutual promises below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

Terms used in this Agreement that are specifically defined in the Health Insurance Portability and Accountability Act (HIPAA) shall have the same meaning as set forth in the Act. A change to HIPAA which modifies any defined HIPAA term, or which alters the regulatory citation for the definition shall be deemed incorporated into this Agreement.

1.1 **"Business Associate"** shall mean the entity described above. Where the term "business associate" appears without an initial capital letter, it shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR §160.103.

1.2 **"Covered Entity"** shall mean the entity described above.

1.3 **"Data Aggregation"** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.

1.4 **"Designated Record Set"** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

1.5 **"Electronic Protected Health Information"** and/or **"EPHI"** shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, and shall include, without limitation, any EPHI provided by Covered Entity or created or received by Business Associate on behalf of Covered Entity.

1.6 **"HIPAA Rules"** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules found at 45 CFR Part 160 and Part 164.

1.7 **"HITECH"** means the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

1.8 **"Individual"** shall have the meaning given to the term under the Privacy Rule, including, but not limited to, the definition found at 45 CFR § 160.103. It shall also include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.9 **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information, and Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"), that are codified at 45 CFR parts 160 and 164, Subparts A, C, and E and any other applicable provision of HIPAA, and any amendments thereto, including HITECH.

1.10 **"Protected Health Information"** and/or **"PHI"** shall have the meaning given to the term under the Privacy Rule, including but not limited to, the definition found at 45 CFR § 160.103, and shall include, without limitation, any PHI provided by Covered Entity or created or received by Business Associate on behalf of Covered

Entity. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use of PHI shall apply equally to EPHI.

1.11 **"Required By Law"** shall have the meaning given to the term under the Privacy Rule, including but not limited to, the definition found at 45 CFR § 164.304 and any additional requirements created under HITECH and the HIPAA Rules.

1.12 **"Secretary"** shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.13 **"Security Incident"** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 CFR § 164.304.

1.14 **"Services Agreement"** shall mean the underlying agreement(s) that outline the terms of the services that Business Associate agrees to provide to Covered Entity and that fall within the functions, activities or services described in the definition of "Business Associate" at 45 CFR § 160.103.

1.15 **"Unsecured PHI"** shall have the same definition that the Secretary gives the term in guidance issued pursuant to 45 CFR §164.402.

2. BUSINESS ASSOCIATE OBLIGATIONS

2.1 Business Associate agrees that it shall only use and disclose PHI in accordance with the terms of this Agreement or as is Required By Law.

2.2 Business Associate shall not use or disclose PHI except for the purpose of performing Business Associate's obligations to Covered Entity, as such use or disclosure is limited by this Agreement. Business Associate is being contracted with Covered Entity for the providing the following Service(s): To help with the operation of the business

2.3 Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule.

2.4 Business Associate will ensure that any agents, including subcontractors, to whom it provides PHI, or who create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions, including but not limited to those relating to termination of the contract for improper disclosure, that apply to Business Associate with respect to such information. Further, Business Associate shall implement and maintain sanctions against agents and subcontractors, if any, that violate such restrictions and conditions. Business Associate shall terminate any agreement with an agent or subcontractor, if any, who fails to abide by such restrictions and obligations. Business Associate shall not provide any PHI to any third party or subcontract any Services without Covered Entity's express written permission.

2.5 Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of the PHI or EPHI other than as provided for in this Agreement, and to implement administrative, physical, and technical safeguards as required by the HIPAA Rules in order to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Covered Entity.

2.6 The additional requirements of the HIPAA Rules that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this

reference are hereby incorporated into this Agreement.

2.7 Business Associate agrees to adopt the technology and methodology standards provided in any guidance issued by the Secretary in the HIPAA Rules.

2.8 Business Associate agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement and to notify covered entity of any breach of unsecured PHI, as required under the HIPAA Rules and Section 2.19 of this Agreement.

2.10 Business Associate may disclose PHI as Required by Law.

2.11 Business Associate shall make PHI in Designated Record Sets that are maintained by Business Associate or its agents or subcontractors, if any, available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy rule, including, but not limited to the provisions found at 45 CFR § 164.524.

2.12 Within ten (10) days of receipt of a request from Covered Entity for an amendment of PHI or a record about an Individual contained in a Designated Record Set, Business Associate or its agents or subcontractors, if any, shall make such PHI available to Covered Entity for amendment and shall incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to complying with the provisions found at 45 CFR § 164.526. If an Individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, if any, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any denial of amendment of PHI maintained by Business Associate or its agents or subcontractors, if any, shall be the responsibility of Covered Entity. Upon the approval of Covered Entity, Business Associate shall appropriately amend the PHI maintained by it, or any agents or subcontractors.

2.15 Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of PHI, Business Associate and any agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to obligations found at 45 CFR §164.528. Except in the case of a direct request from an Individual for an accounting related to treatment, payment or operations disclosures through an EPHI record, if the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, if any, Business Associate shall within five business (5) days of a request notify Covered Entity about such request. Covered Entity shall either inform Business Associate to provide such information directly to the Individual, or it shall request the information to be immediately forwarded to Covered Entity for compilation and distribution to such Individual. In the case of a direct request for an accounting from an Individual related to treatment, payment or operations disclosures through EPHI records, Business Associate shall provide such accounting to the Individual in accordance with the HIPAA Rules. Business Associate shall not disclose any PHI unless such disclosure is Required by Law or is in accordance with this Agreement. Business Associate shall document such disclosures.

2.16 Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules. Business Associate shall notify Covered Entity regarding any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary, and upon request by Covered Entity, shall provide Covered Entity with a duplicate copy of such PHI.

2.17 Business Associate and its agents or subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Business Associate agrees to comply with the HIPAA Rules on what constitutes minimum necessary.

2.18 Business Associate acknowledges that Business Associate has no ownership rights related to the

PHI to the extent that it is acting as a Business Associate.

2.19 Business Associate and its subcontractors or agents, if any, shall retain any PHI throughout the term of the Agreement.

2.19 Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual Security Incident or breach of security, intrusion or unauthorized use or disclosure of PHI or EPHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations, or any legal action against Business Associate arising from an alleged HIPAA violation of which it becomes aware. The notice shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the breach. If the breach involves the Unsecured PHI of more than 500 residents of Ohio or residents of a certain region, or is reasonably believed to have been accessed, acquired or disclosed during such incident, Business Associate shall take (i) prompt action to correct any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

2.20 Within ten (10) business days of a written request by Covered Entity, Business Associate and its agents or subcontractors, if any, shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement and the HIPAA Rules; provided, however, that (i) Business Associate and Covered Entity mutually agree in advance upon the scope, location and timing of such an inspection; and (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection.

2.21 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(1)(B).

2.22 If Business Associate knows of a pattern of activity or practice by the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, Business Associate will take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful within a period of 30 days, Business Associate will either: 1) terminate the Agreement, if feasible; or 2) report the problem to the Secretary.

2.23 Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to EPHI, to prevent use or disclosure of PHI other than as provided for in this Agreement.

3. COVERED ENTITY OBLIGATIONS

3.1 Covered Entity shall provide Business Associate with any limitation(s) in the notice of privacy practices that Covered Entity uses under 45 CFR § 164.520, to the extent such limitation may affect Business Associate's use or disclosure of PHI.

3.2 Covered Entity shall provide Business Associate with notice of any changes to, revocation of, or permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted uses or disclosures, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.

3.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

3.4 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity.

4. TERMINATION

4.1 The term of this Agreement shall be effective as of the date of this Agreement and continue until terminated by Covered Entity or any underlying Services Agreement expires or is terminated. Any provision related to the use, disclosure, access, or protection of EPHI or PHI shall survive termination of this Agreement.

4.2 A breach by Business Associate, or its agents or subcontractors, if any, of any provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the Agreement. If Business Associate breaches this Agreement, Covered Entity may, in its discretion: (i) immediately terminate this Agreement; (ii) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not promptly cure the breach or end the violation within a period not to exceed 30 days; or (iii) report the violation to the Secretary if neither termination nor cure is feasible.

4.3 Covered Entity may terminate this Agreement effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH, or other security or privacy laws or (ii) there is a finding or stipulation that Business Associate has violated any standard or requirement of the HIPAA Rules, or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved.

4.4 Upon termination of this Agreement for any reason, Business Associate shall, if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of, the covered entity that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

4.5 If this Agreement is terminated for any reason, Covered Entity may also terminate the Services Agreement between the parties. This provision shall supersede any termination provision to the contrary which may be set forth in the Services Agreement.

5. MISCELLANEOUS

5.1 A reference in this Agreement to a section in the HIPAA Rules means the HIPAA Rules section as that section is in effect or as it is amended.

5.2 Business Associate may not subcontract any Services or assign any rights, nor may it delegate its duties, under this Agreement without the express written consent of Covered Entity.

5.3 Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, or their respective successors or assigns, agents, or subcontractors, any rights, remedies, obligations or liabilities whatsoever.

5.4 The parties are independent contractors and nothing in this Agreement shall be deemed to make them partners or joint venturers.

5.5 If any modification to this Agreement is Required By Law or required by HITECH or the HIPAA Rules or any other federal or state law affecting this Agreement, or if Covered Entity reasonably concludes that an amendment to this Agreement is needed because of a change in federal or state law or changing industry standards, Covered Entity shall notify Business Associate of such proposed modification(s) ("Legally-Required

Modifications"). Such Legally Required Modifications shall be deemed accepted by Business Associate and this Agreement so amended, if Business Associate does not, within thirty (30) calendar days following the date of the notice (or within such other time period as may be mandated by applicable state or federal law), deliver to Covered Entity its written rejection of such Legally-Required Modifications. Such a rejection shall allow Covered Entity to terminate this Agreement.

5.6 Business Associate will comply with all appropriate federal and state security and privacy laws, to the extent that such laws apply to Business Associate or are more protective of Individual privacy than are the HIPAA laws and Rules.

5.7 All notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic facsimile (with a confirmation by registered or certified mail placed in the mail no later than the following day), or by registered or certified mail, postage prepaid, addressed to a party as indicated below:

If to Covered Entity:

Debra K. Sowald, Psy.D.
28 E. Rahn Rd., Suite 105
Kettering, OH 45429

If to Business Associate:

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered or transmitted by electronic facsimile and, as to communications made by United States mail, on the third (3rd) day after mailing. The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

5.9 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall continue in full force and effect.

5.10 This Agreement contains the entire understanding between the parties hereto and shall supersede any other oral or written agreements, discussions and understandings of every kind and nature, including any provision in any Services Agreement. No modification, addition to or waiver of any right, obligation or default shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. No delay or failure of either party to exercise any right or remedy available hereunder, at law or in equity, shall act as a waiver of such right or remedy, and any waiver shall not waive any subsequent right, obligation, or default.

5.11 This Agreement shall be governed by the laws of the state of Ohio.

5.12 Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

The parties have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date listed at the beginning of this agreement.

Business Associate:

By: _____

Printed Name: _____

Its: _____

Covered Entity: Debra K. Sowald, Psy.D.
