

BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (this “**BAA**”) is made and entered into in connection with the Agreement (defined herein) and shall be effective as of the effective date of the Agreement (the “**Effective Date**”), by and between _____, on behalf of itself and for the benefit of its various affiliates (“**Covered Entity**”), and Easy EMDR Inc. (“**Business Associate**”).

RECITALS

WHEREAS, Business Associate has agreed to provide certain services to Covered Entity pursuant to a Service Agreement (the “**Agreement**”) which establishes the relationship between Covered Entity and Business Associate;

WHEREAS, Covered Entity and Business Associate mutually desire to outline their individual responsibilities with respect to the Use and/or Disclosure of Protected Health Information (PHI) as mandated by the Privacy Standards, the Electronic Transaction Standards, the Security Standards, and the Breach Notification Rules under Health Insurance Portability and Accountability Act (HIPAA); and

WHEREAS, Covered Entity and Business Associate understand and agree that the Privacy Standards require that Covered Entity and Business Associate enter into a Business Associate Agreement which shall govern the Use and/or Disclosure of PHI.

NOW THEREFORE, Covered Entity and Business Associate therefore agree to the following terms and conditions:

I. Definitions and Term

The following terms are defined as set forth below. Any terms used but not otherwise defined in this BAA have the definitions set forth HIPAA and the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”), found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, and any regulations promulgated thereunder.

- a. “**Breach**” shall have the meaning set forth in 45 C.F.R. § 164.402.
- b. “**Designated Record Set**” shall have the meaning set forth in 45 C.F.R. § 164.501 and shall include, but not be limited to, medical records and billing records about Individuals.
- c. “**Electronic Protected Health Information**” or “**EPHI**” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.
- d. “**Individual**” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- e. “**Protected Health Information**” or “**PHI**” means, subject to the definition provided at 45 C.F.R. § 160.103, individually identifiable health information that Business Associate receives from Covered Entity or creates, receives, transmits or maintains on behalf of Covered Entity for purposes of performing the services under the Agreement. Unless otherwise stated in this BAA, any provision, restriction or obligation in this BAA related to the use of PHI shall apply equally to EPHI.

- f. **“Required by Law”** shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- g. **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or their designee.
- h. **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with the system operations in an information system.
- i. **“Subcontractor”** means a person to whom a business associate delegates a function, activity or service, other than in the capacity of a member of the workforce of such business associate.
- j. **“Unsecured PHI”** shall have the same meaning as the term “Unsecured PHI” in 45 C.F.R. § 164.402.

Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form by Covered Entity to Business Associate, or is created, received, maintained or transmitted by Business Associate on Covered Entity’s behalf, will be subject to this BAA.

II. Obligations and Activities of Business Associate

- a. Use and Disclosure. Business Associate will not use or further disclose PHI other than as permitted or required by this BAA or as Required by Law. Business Associate will not use or disclose PHI in a manner that would violate HIPAA if done by Covered Entity.
- b. HIPAA Security Rule. Business Associate will develop, implement, maintain and use appropriate safeguards, and comply with the Security Rule at Subpart C of 45 C.F.R. Part 164, with respect to EPHI, to prevent use or disclosure of the PHI other than as provided for by this BAA.
- c. HIPAA Privacy Rule. Business Associate will comply with all requirements of the Privacy Rule at Subpart E of 45 C.F.R. Part 164 that apply to business associates.
- d. Mitigation. Business Associate will mitigate, to the extent practicable, 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 BAA.
- e. Subcontractors. In accordance with the requirements of the HIPAA, Business Associate will ensure that any Subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate agrees in writing to the same restrictions that apply to Business Associate with respect to that PHI.
- f. Reports of Impermissible Use or Disclosure of PHI; Security Incident. Business Associate will report to Covered Entity any use or disclosure of PHI not provided for or permitted by this BAA of which it becomes aware, or any Security Incident of EPHI of which it becomes aware, within five (5) days of the date on which Business Associate first discovers the use, disclosure or Security Incident. Notwithstanding the foregoing Business Associate is not required to report attempted but unsuccessful Security Incidents, and this BAA constitutes notice that such unsuccessful Security Incidents occur periodically. Unsuccessful Security Incidents include

pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as such incidents do not result in actual unauthorized access, use, or disclosure of PHI

- g. Breaches of Unsecured PHI. Business Associate will report to Covered Entity any Breach of Unsecured PHI by Business Associate or any of its officers, directors, employees, Subcontractors or agents. All notifications of Breach of Unsecured PHI will be made by Business Associate to Covered Entity without unreasonable delay and in no event later than five (5) days of discovery. Business Associate will use the standard at 45 C.F.R. § 164.410(a) to determine when the Breach is treated as discovered. All notifications will comply with Business Associate's obligations under, and include the information specified in, 45 C.F.R. § 164.410 and include any other available information that Covered Entity is required to include in its notification to individuals pursuant to 45 C.F.R. § 164.404(c).
- h. Access. In the event an Individual requests access to PHI in a Designated Record Set from Business Associate, Business Associate will provide Covered Entity with notice of the same within five (5) days. Business Associate will provide access, within ten (10) days of a request of Covered Entity and in the manner designated by Covered Entity, to PHI in a Designated Record Set to Covered Entity, or, as directed by Covered Entity, to an Individual or the Individual's designee in order to meet the requirements under 45 C.F.R. § 164.524 (Access). If the PHI that is the subject of a request is maintained by the Business Associate in a Designated Record Set electronically, Business Associate will provide an electronic copy of such information to the Covered Entity, or, as directed by the Covered Entity, to the Individual or the Individual's designee, in the format required by HIPAA and as directed by Covered Entity, in order to meet the Covered Entity's obligations under 45 C.F.R. § 164.524.
- i. Amendment. In the event Business Associate receives a request from an Individual for an amendment to PHI in a Designated Record Set, Business Associate will provide Covered Entity with notice of the same within five (5) days. Business Associate will make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 (Amendment) within ten (10) days of a request of Covered Entity or an Individual and in the manner designated by Covered Entity, in order to meet the Covered Entity's obligations under 45 C.F.R. § 164.526. Business Associate will incorporate any amendments to PHI it receives from Covered Entity and will notify Covered Entity of any amended PHI that it receives from third parties relating to Covered Entity's PHI.
- j. Accounting of Disclosures. Business Associate will document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to fulfill its obligations in responding to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528, and will provide such information to Covered Entity or an Individual, in the time and manner designated by Covered Entity. Except in the case of a direct request from an Individual for an accounting related to treatment, payment or healthcare operations disclosures through an electronic health record, if the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate will, within five (5) days of a request, notify Covered Entity of the request. Covered Entity will either inform Business Associate to provide such information directly to the Individual, or it will request the information to be immediately forwarded to Covered Entity for compilation and distribution to such Individual, and Business Associate will provide such information in its possession within ten (10) days of Covered Entity's request. In the case of a direct request for an accounting from an Individual related to treatment, payment or healthcare operations disclosures through electronic health records, Business Associate will provide such accounting

to the Individual in accordance with Section 13405(c) of HITECH and such regulations as are adopted thereunder. Covered Entity and Business Associate agree that the provisions of this section related to accounting of disclosures for treatment, payment and healthcare operations purposes from an electronic health record will only be effective as of such date such accountings of disclosures are required under HITECH. Business Associate and any agent or Subcontractors will maintain the information required for purposes of complying with this section for such period of time as is required under HIPAA and HITECH.

- k. Covered Entity's Obligations Under Privacy Rule. To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate will comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
- l. Records. Business Associate will 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 HIPAA. Business Associate will 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, will provide Covered Entity with a duplicate copy of such PHI.
- m. Minimum Necessary. Business Associate and its Subcontractors, if any, will only request, use and disclose the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure. Business Associates agrees, and it will ensure that its Subcontractors agree, to comply with Section 13405(b) of HITECH, any regulations issued thereunder or any guidance from the Secretary regarding what constitutes the definition of minimum necessary.
- n. Compliance with HITECH. Business Associate will comply with all requirements of Title XIII, Subtitle D of HITECH which are applicable to business associates, and will comply with all regulations issued by the Secretary to implement these referenced statutes, as of the date by which business associates are required to comply with such referenced statutes and regulations.

III. Permitted Uses and Disclosures by Business Associate

- a. Required by Law. Business Associate may use or disclose PHI as Required by Law.
- b. To Carry Out Agreement. Except as otherwise limited in this BAA, for purposes of the services provided as part of the Agreement, Business Associate may use or disclose PHI solely to perform functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the HIPAA if done by Covered Entity.
- c. Management and Administration. Except as otherwise limited in this BAA, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, as provided in 45 C.F.R. § 164.504(e)(4). In addition, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that such disclosures are Required by Law or Business Associate obtains, prior to the disclosure, reasonable assurances from the person to whom it is disclosed that such PHI will be held secure and confidential as provided pursuant to this BAA and only disclosed as Required by Law or for the purposes for which it was disclosed to the third party, and that any breaches of confidentiality of the PHI which becomes known to such third party will be immediately reported to Business Associate.

- d. Data Aggregation. Business Associate may use PHI to provide data aggregation services related to the health care operations of the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- e. De-identification. Business Associate may de-identify PHI in accordance with the standards set forth at 45 C.F.R. § 164.514 (a-b).

IV. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- a. Notice of Privacy Practices. Covered Entity will provide Business Associate, upon request, with Covered Entity's Notice of Privacy Practices in effect at the time of the request.
- b. Revocation of Permission. Covered Entity will provide Business Associate with any changes in or revocation of permission by an Individual to use or disclose PHI to the extent such changes may affect Business Associate's permitted or required uses and disclosures.
- c. Restrictions on Use and Disclosure. Covered Entity will notify Business Associate of any material restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent such restrictions may affect Business Associate's use and disclosure of PHI.

V. Obligations of the Covered Entity

Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible if done by Covered Entity.

VI. Termination

- a. Termination for Cause by Covered Entity. Covered Entity is authorized to terminate this BAA and the Agreement in accordance with this Section if Business Associate has violated a material term of this BAA. Upon Covered Entity's knowledge of a material breach of this BAA by Business Associate, Covered Entity will provide written notice of such breach to Business Associate and provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within thirty (30) days, then Covered Entity may immediately terminate this BAA and the Agreement.
- b. Effect of Termination.
 - 1. Except as provided in paragraph 2 of this section, upon termination of the Agreement, Business Associate will return or destroy all PHI received from Covered Entity or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity. This provision will apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of PHI.
 - 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide to Covered Entity notification of the conditions that make return or destruction infeasible and will extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI.

VII. Miscellaneous

- a. Survival. The respective rights and obligations of Business Associate and Covered Entity under Sections II, VI, and VII of this BAA shall survive the termination of this BAA.
- b. Interpretation. Any ambiguity in this BAA will be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with HIPAA and HITECH.
- c. No Third Party Beneficiaries. This BAA is intended for the sole benefit of the Business Associate and Covered Entity and does not create any third party beneficiary rights.
- d. Unenforceability. In the event that any provision of this BAA is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this BAA will remain in full force and effect. In addition, in the event either party believes in good faith that any provision of the BAA fails to comply with the then-current requirements of HIPAA, that party will notify the other party in writing. For a period of up to thirty (30) days, the parties will address in good faith such concern and will amend the terms of this BAA if necessary to bring it into compliance. If after such thirty (30) day period either party in good faith believes that this BAA fails to comply with HIPAA then that party has the right to terminate this BAA upon written notice to the other party.
- e. Independent Contractors. Business Associate is not the agent of Covered Entity and Covered Entity does not control, supervise or instruct Business Associates or any Subcontractors. The parties are independent contractors and nothing in this BAA will be deemed to make them partners or joint venturers or make Business Associate an agent of Covered Entity.
- f. Entire Agreement. This BAA is the entire agreement of the parties related to its subject matter and supersedes all prior agreements between the parties that were designated or qualified as business associate agreements and replaces all previous drafts, understandings and communications.

IN WITNESS WHEREOF, duly authorized representatives of the parties have executed this Business Associate Agreement to the Agreement as of the Effective Date.

BUSINESS ASSOCIATE:

Easy EMDR Inc.

By: _____

Name: _____

Title: _____

Date: _____

COVERED ENTITY:

By: _____

Name: _____

Title: _____

Date: _____