

## **Limbic Resources, Inc.**

*Dba Lewis Bay Associates, Bourne Pond Associates & The Memory & Attention Center*

Limbic Resources, Inc.  
119 Cedar Street  
Hyannis, MA 02601

### **Business Associate Agreement:**

This Agreement is entered into by and between Limbic Resources, Inc. (hereafter called the Health Care Provider) and \_\_\_\_\_ (hereafter called the Business Associate) to set forth the terms and conditions under which protected health information ("PHI"), as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Regulations enacted under that act, created or received by the Business Associate on behalf of the Health Care Provider may be used or disclosed.

This Agreement shall begin on \_\_\_\_\_ and the obligations of this agreement shall continue in effect so long as the Business Associate uses, discloses, creates or otherwise possesses any PHI created or received on behalf of the Health Care Provider and until all PHI created or received by the Business Associate on behalf of the Health Care Provider is destroyed or returned to the Health Care Provider according to Section 14 of this agreement.

1) The Health Care Provider and the Business Associate hereby agree that the Business Associate shall be permitted to use and/or disclose PHI created or received on behalf of the Health Care Provider for the following purpose(s):

- A. Preparing statements for clients
- B. Completing and submitting health care claims to health plans and other third party payers.

2) The Business Associate may use and disclose PHI created or received by the Business Associate on behalf of the Health Care Provider if necessary for the proper management and administration of the Business Associate or to carry out the Business Associate's legal responsibilities, provided that any disclosure is:

- A. Required by law; or
- B. The Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that:
  - i. the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and,
  - ii. the Business Associate will be notified of any instances of which the person is aware in which the confidentiality of the information is breached.
- C. The Business Associate hereby agrees to maintain the security and privacy of all PHI in a manner consistent with state and federal laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Regulations pertaining to HIPAA, and all other applicable law.

3) The Business Associate further agrees not to use or disclose PHI except as expressly permitted by this Agreement, applicable law, or for the purpose of managing Business Associate's own internal business processes consistent with Paragraph 2 herein.

4) The Business Associate shall not disclose PHI to any member of its workforce unless the Business Associate has advised such person of the Business Associate's privacy and security obligations under this Agreement, including the consequences for violation of such obligations. The Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violations of this Agreement and applicable law.

5) The Business Associate shall not disclose PHI created or received by the Business Associate on behalf of the Health Care Provider to a person, including any agent or subcontractor of the Business Associate but not including a member of the Business Associate's own workforce, until such person agrees in writing to be bound by the provisions of this Agreement and applicable state or federal law.

6) The Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI not permitted by this Agreement or applicable law.

7) The Business Associate agrees to maintain a record of all disclosures of PHI, including disclosures not made for the purposes of this Agreement. Such record shall include the date of the disclosure, the name and, if known, the address of the recipient of the PHI, the name of the individual who is the subject of the PHI, a brief description of

---

the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to an individual who is the subject of such information or the Health Care Provider within thirty (30) days of a request and shall include disclosures made on or after the date which is six (6) years prior to the request or April 14, 2003, whichever is later.

8) The Business Associate agrees to report to the Health Care Provider any unauthorized use or disclosure of PHI by the Business Associate or its workforce or subcontractors and the remedial action taken or proposed to be taken with respect to such use or disclosure.

9) The Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from the Health Care Provider, or created or received by the Business Associate on behalf of the Health Care Provider, available to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Health Care Provider's, compliance with HIPAA.

10) Within thirty (30) days of a written request by the Health Care Provider, Business Associate shall allow a person who is the subject of PHI, such person's legal representative, or the Health Care Provider to have access to and to copy such person's PHI maintained by the Business Associate. The Business Associate shall provide PHI in the format requested by such person, legal representative, or the Health Care Provider unless it is not readily producible in such format, in which case it shall be produced in standard hard copy format.

11) The Business Associate agrees to amend, pursuant to a request by the Health Care Provider, PHI maintained and created or received by the Business Associate on behalf of the Health Care Provider. The Business Associate further agrees to complete such amendment within thirty (30) days of a written request by the Health Care Provider, and to make such amendment as directed by the Health Care Provider.

12) In the event Business Associate fails to perform the obligations under this Agreement, the Health Care Provider may, at its option:

- A. Require Business Associate to submit to a plan of compliance, including
- B. monitoring by the Health Care Provider and reporting by the Business Associate,
- C. as the Health Care Provider, in its sole discretion, determines necessary to
- D. maintain compliance with this Agreement and applicable law. Such plan shall be
- E. incorporated into this Agreement by amendment hereto; and require the Business Associate to mitigate any loss occasioned by the unauthorized disclosure or use of PHI.
- F. Immediately discontinue providing PHI to the Business Associate with or without written notice to the Business Associate.

13) The Health Care Provider may immediately terminate this Agreement and related agreements if the Health Care Provider determines that the Business Associate has breached a material term of this Agreement. Alternatively, the Health Care Provider may choose to:

- A. provide the Business Associate with ten (10) days written notice of the existence of an alleged material breach; and
- B. afford the Business Associate an opportunity to cure said alleged material breach to the satisfaction of the Health Care Provider within ten (10) days. The Business Associate's failure to cure shall be grounds for immediate determination of this Agreement. The Health Care Provider's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

14) Upon termination of this Agreement, Business Associate shall return or destroy all PHI received from Health Care Provider, or created or received by Business Associate on behalf of the Health Care Provider and that the Business Associate maintains in any form, and shall retain no copies of such information. If the parties mutually agree that return or destruction of PHI is not feasible, the Business Associate shall continue to maintain the security and privacy of such PHI in a manner consistent with the obligations of this Agreement and as required by applicable law, and shall limit further use of the information to those purposes that make the return or destruction of the information infeasible. The duties hereunder to maintain the security and privacy of PHI shall survive the discontinuance of this Agreement.

15) The Health Care Provider may amend this Agreement by providing ten (10) days prior written notice to the Business Associate in order to maintain compliance with State or Federal law. Such amendment shall be binding

upon the Business Associate at the end of the ten (10) day period and shall not require the consent of the Business Associate. The Business Associate may elect to discontinue the Agreement within the ten (10) day period, but the Business Associate's duties hereunder to maintain the security and privacy of PHI shall survive discontinuance of the Agreement.

16) The Health Care Provider and the Business Associate may otherwise amend this Agreement by mutual written agreement.

17) The Business Associate shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the Health Care Provider and his/her respective employees, directors, and agents from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys fees, including at trial and on appeal) asserted or imposed against the Health Care Provider and his/her respective employees, directors, and agents arising out of the acts or omissions of the Business Associate or any subcontractor of or consultant of the Business Associate or any of the Business Associate's employees, directors, or agents related to the performance or nonperformance of this Agreement.

**Limbic Resources Representative**\_\_\_\_\_ **Date**\_\_\_\_\_

**Business Associate**\_\_\_\_\_ **Date**\_\_\_\_\_

**Appendix to the Preamble— Business Associate Contract Provisions**

*Catch-all definition:* Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) 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.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section 7 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

*Permitted Uses and Disclosures by Business Associate*

General Use and Disclosure Provisions

A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity:

- 1. Preparing statements for clients
- 2. Completing and submitting health care claims to health plans and other third party payers.

B. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Policies and Procedures Document, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

Specific Use and Disclosure Provisions

- (a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

*Obligations of Covered Entity*

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

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

Permissible Requests by Covered Entity

(a) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

(b) Except if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

Term and Termination

(a) *Term.* The Term of this Agreement shall be effective as of \_\_\_\_\_, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement [and the Agreement/sections of the Agreement] if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement [and the Agreement/sections of the Agreement] if Business Associate has breached a material term of this Agreement and cure is not possible.

(c) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this section, 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.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *Amendment.* 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, Public Law 104-191.

(c) *Survival.* The respective rights and obligations of Business Associate under Section 14 of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.