

## TherapyNotes Business Associate Agreement

This Business Associate Agreement ("Agreement") is made by and between **TherapyNotes, LLC** (**hereinafter "Business Associate"**) and Stepping Stones Therapy PLLC (hereinafter "Covered Entity") as of 3/21/2022 (hereinafter the "Effective date").

### RECITALS

- A. WHEREAS, Covered Entity is a "Covered Entity" as defined under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and its implementing regulations (collectively, "HIPAA"), as amended by the final regulations promulgated pursuant to the Health Information Technology for Economic and Clinical Health (such regulations, "HITECH") Act (Division A, Title XIII and Division B, Title IV of Pub. L. No. 111-5) (which was part of the American Recovery and Reinvestment Act of 2009), and TherapyNotes, LLC is a "Business Associate" as defined under HIPAA;
- B. WHEREAS, in connection with the Service Agreement between Covered Entity and Business Associate, Covered Entity may provide Business Associate with protected health information (defined below);
- C. WHEREAS, Covered Entity is required by HIPAA to obtain satisfactory assurances that Business Associate will appropriately safeguard all protected health information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity; and
- D. WHEREAS, the parties hereto desire to enter into this Agreement to memorialize their obligations with respect to protected health information pursuant to the requirements of HIPAA, including the Privacy Rule (defined below), the Security Rule (defined below) and the Breach Notification Rule (defined below).

NOW, THEREFORE, In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

#### 1. DEFINITIONS.

- 1.1 **Breach** shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 CFR § 164.402.
- 1.2 **Breach Notification Rule** shall mean the Notification in the Case of Breach of Unsecured PHI at 45 C.F.R. Part 160 and Part 164, Subpart D.
- 1.3 **Designated Record Set** shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 164.501.
- 1.4 **Electronic PHI (hereinafter also "ePHI")** shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity .
- 1.5 **Individual** shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.6 **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

- 1.7 **Protected Health Information (hereinafter also "PHI")** shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created, received by, maintained or transmitted to or by Business Associate, to or from or on behalf of Covered Entity.
- 1.8 **Required by Law** shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- 1.9 **Secretary** shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.10 **Security Rule** shall mean the Security Standards for the Protection of Electronic PHI at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- 1.11 **Service Agreement** shall mean the TherapyNotes Terms of Service entered into by and between Business Associate and Covered Entity available online at <https://www.therapynotes.com/legal/usertermsofservice/>

All other capitalized terms not defined herein shall have the meanings assigned in the Privacy Rule, Security Rule, and Breach Notification Rule.

## 2. **PRIVACY RULE PERMITTED USES AND DISCLOSURES OF BUSINESS ASSOCIATE**

- 2.1 General Use and Disclosure Provisions. Except as otherwise provided in his Agreement, Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Service Agreement.
- 2.2 Specific Use and Disclosure Provisions:
  - 2.2.1 Business Associate may use PHI as necessary to perform the services set forth in the Service Agreement.
  - 2.2.2 Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
  - 2.2.3 Business Associate may disclose PHI for the proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate, provided that the 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 or is suspected to have been breached.
  - 2.2.4 Business Associate may use or disclose PHI as Required by Law.
  - 2.2.5 Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B)..
  - 2.2.6 Business Associate may de-identify PHI in accordance with 45 C.F.R. § 164.514(b).
  - 2.2.7 Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

3. **PRIVACY RULE OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

- 3.1 Limitations on Disclosure. Business Associate agrees not to use or further disclose PHI other than as permitted or required by this Agreement, the Service Agreement or as Required by Law. Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity, unless expressly permitted to do so pursuant to the Privacy Rule, the Service Agreement, and this Agreement.
- 3.2 Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- 3.3 Obligations on Behalf of Covered Entity. To the extent Business Associate carries out an obligation for which Covered Entity is responsible under the Privacy Rule, Business Associate must comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.
- 3.4 Mitigation. Business Associate shall 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 Agreement.
- 3.5 Reporting of Improper Use or Disclosure. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement promptly after becoming aware of such use or disclosure.
- 3.6 Business Associate's Subcontractors. Business Associate agrees, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), if applicable, to ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.7 Access to PHI. The parties agree that Covered Entity shall handle all requests for PHI. To the extent Covered Entity requires the assistance of Business Associate, within twenty (20) days of receiving a written request from Covered Entity, Business Associate agrees to provide access to PHI in a Designated Record Set, to Covered Entity in order to meet the requirements under 45 CFR 164.524.
- 3.8 Forwarding Requests for Access to PHI. Business Associate agrees to forward to Covered Entity any request for PHI in a Designated Record Set received from an Individual within five (5) days of receipt of the request, for Covered Entity to fulfill in accordance with 45 C.F.R. § 164.524.
- 3.9 Amendment of PHI. The parties agree that Covered Entity shall handle all requests for amendments to PHI. To the extent Covered Entity requires the assistance of Business Associate, within thirty (30) days of receiving a written request from Covered Entity, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526.
- 3.10 Forwarding Requests for Amendment of PHI. Business Associate agrees to forward to Covered Entity any request for any amendment(s) to PHI in a Designated Record Set received directly from an Individual within five (5) days of receipt of the request, for Covered Entity to fulfill in accordance with 45 C.F.R. § 164.524.
- 3.11 Government Access to Records. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

- 3.12 Documentation of Disclosures. Business Associate agrees to document such disclosures of PHI 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 PHI in accordance with 45 C.F.R. § 164.528.
- 3.13 Accounting of Disclosures. The parties agree that Covered Entity shall handle all requests for accountings of disclosures of PHI. To the extent Covered Entity requires the assistance of Business Associate, within fifteen (15) days of receiving a written request from Covered Entity, Business Associate agrees to make available the information necessary for Covered Entity to make an accounting of Disclosures of PHI about an Individual as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.
- 3.14 Forwarding Requests for Accounting of Disclosures. Business Associate agrees to forward to Covered Entity any request for an accounting of Disclosures of PHI received from an Individual within five (5) days of receipt of the request, for Covered Entity to fulfill in accordance with 45 C.F.R. § 164.528.
- 3.15 Minimum Necessary. Business Associate agrees to make uses and disclosures and requests for PHI consistent with the minimum necessary requirements set forth in the Minimum Necessary Standard for PHI policy, available at <https://www.therapynotes.com/legal/minphi/>, which Covered Entity shall review and confirm are consistent with Covered Entity's minimum necessary policies and procedures. The minimum necessary requirements are subject to change, with notice to be provided to Covered Entity by Business Associate prior to the implementation of any changes, so that Covered Entity may review and confirm any revisions are consistent with Covered Entity's minimum necessary policies and procedures.

#### 4. **SECURITY RULE OBLIGATIONS OF BUSINESS ASSOCIATE**

- 4.1 Compliance with the Security Rule. Business Associate agrees to comply with the Security Rule with respect to ePHI and have in place reasonable and appropriate Administrative, Physical, and Technical Safeguards to protect the Confidentiality, Integrity, and Availability of ePHI and to prevent the use or disclosure of ePHI other than as permitted by the Service Agreement and this Agreement or as Required by Law.
- 4.2 Subcontractors. Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits ePHI on behalf of Business Associate agrees in writing to comply with the Security Rule with respect to such ePHI.
- 4.3 Security Incident. Business Associate shall report any successful Security Incident promptly upon becoming aware of such incident. For purposes of this Agreement, an "unsuccessful" Security Incident is an unsuccessful attempt to breach the security of Business Associate's systems that Business Associate determines was targeted at Business Associate's systems storing Covered Entity's ePHI, and includes general "pinging" or "denial of service" attacks that are not determined to have been directed at such ePHI, and such unsuccessful Security Incidents shall be deemed as having been reported.

#### 5. **BREACH NOTIFICATION RULE OBLIGATIONS OF BUSINESS ASSOCIATE**

- 5.1 Notification Requirement. To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses Unsecured PHI, it will, following the discovery of a Breach of such information, notify Covered Entity of such Breach without unreasonable delay and in no case later than 60 days after discovery of the Breach.
- 5.2 Discovery of Breach. For purposes of reporting a Breach to Covered Entity, the discovery of a Breach shall occur on the first day on which such Breach is known to Business

Associate or, by exercising reasonable diligence, would have been known to or suspected by the Business Associate. Business Associate will be considered to have had knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known to any person (other than the person committing the Breach) who is an employee, officer or agent of the Business Associate.

- 5.3 Contents of Notification. Any notice referenced above in paragraph 5.1 of this Agreement will include, to the extent known to the Business Associate, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used, or disclosed during such Breach. Business Associate will also provide to Covered Entity other available information that the Covered Entity is required to include in its notification to the individual pursuant to the Breach Notification Rule .

## 6. **OBLIGATIONS OF COVERED ENTITY.**

- 6.1 Permissible Requests by Covered Entity. Covered entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
- 6.2 Covered Entity remains responsible for fulfilling Individual rights or other obligations of the Covered Entity under the Privacy Rule. Covered Entity is not delegating any of its obligations or responsibilities under the Privacy Rule to Business Associate, such that Business Associate is not obligated to comply with the requirements of the Privacy Rule which apply to the Covered Entity as provided in 45 C.F.R. § 164.504(e)(2)(ii)(H).
- 6.3 As soon as possible after receiving a request for PHI from an Individual which will require PHI to be produced by Business Associate, but in any event no more than five (5) days after receiving such a request, Covered Entity shall provide Business Associate with written notice of the request for information. Covered Entity agrees that any failure on its part to provide written notice to Business Associate of the request for information within the time frame specified in this section may impair Business Associate's ability to provide the requested information to Covered Entity in order to meet the requirements under 45 C.F.R. § 164.524. In the event Covered Entity fails to provide written notice to the Business Associate of the request for information within the time frame specified in this section, Covered Entity agrees to indemnify and hold Business Associate harmless from any damages, fees or fines which may be imposed for any failure to comply with 45 C.F.R. § 164.524.
- 6.4 As soon as possible after receiving a request for an amendment from an Individual which will require action by Business Associate to complete, but in no event no more than five (5) days after receiving such a request, Covered Entity shall provide Business Associate with written notice of the amendment. Covered Entity agrees that any failure on its part to provide written notice to Business Associate of the amendment within the time frame specified in this section may impair Business Associate's ability to provide the requested information to Covered Entity in order to meet the requirements under 45 C.F.R. § 164.526. In the event Covered Entity fails to provide written notice to the Business Associate of the amendment within the time frame specified in this section, Covered Entity agrees to indemnify and hold Business Associate harmless from any damages, fees or fines which may be imposed for any failure to comply with 45 C.F.R. § 164.526.
- 6.5 As soon as possible after receiving a request for an accounting of disclosures of PHI from an Individual which will require action by Business Associate to complete, but in no event more than five (5) days after receiving such a request, Covered Entity shall provide Business Associate with written notice of the request for an accounting of disclosures of PHI from an Individual. Covered Entity agrees that any failure on its part to provide written notice to Business Associate of the request for an accounting

within the time frame specified in this section may impair Business Associate's ability to provide the requested information to Covered Entity in order to meet the requirements under 45 C.F.R. § 164.528. In the event Covered Entity fails to provide written notice to the Business Associate of the request for an accounting within the time frame specified in this section, Covered Entity agrees to indemnify and hold Business Associate harmless from any damages, fees or fines which may be imposed for any failure to comply with 45 C.F.R. § 164.528.

- 6.6 To the extent that Covered Entity has agreed to further limitations on uses and disclosures of PHI, Covered Entity shall notify Business Associate of such additional limitations, including any limitation(s) in Covered Entity's notice of privacy practices that are produced in accordance with 45 C.F.R. § 164.520 (as well as any changes to that notice), to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.
- 6.7 Covered Entity shall promptly provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes affect Business Associate's use or disclosure of PHI.
- 6.8 Covered Entity shall promptly notify Business Associate of any 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 that such restriction may affect Business Associate's use or disclosure of PHI.
- 6.9 Covered Entity shall provide Business Associate only the Minimum Necessary amount of PHI for Business Associate to accomplish the intended purpose of the disclosure.

## 7. **TERM AND TERMINATION.**

- 7.1 Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate on the date of the termination of the Service Agreement, or on the date Covered Entity terminates for cause as authorized in Section 7.2 below, whichever is sooner.
- 7.2 Termination for Cause. If either party obtains knowledge of a material breach by the other party, the non-breaching party shall provide the breaching party with written notice and an opportunity to cure the breach or end the violation within thirty (30) days of receipt of the notice. If the breaching party does not cure the breach or end the violation within the 30 day time period specified above, or if the breach is reasonably incapable of cure, then the non-breaching party may terminate this Agreement. Termination of this Agreement for Cause shall automatically terminate the Service Agreement.
- 7.3 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
  - 7.3.1 Retain PHI in conformity with the "grace period" set forth in the Service Agreement, and pursuant to which Covered Entity shall have the opportunity to retrieve or copy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form. Said retention of PHI during the "grace period" is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - 7.3.2 Continue, during the "grace period" as set forth in the Service Agreement, to extend the protections of this Agreement to such PHI and use appropriate

safeguards and comply with the Security Rule with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

- 7.3.3 Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 2.2.1 and 2.2.5 above, which applied prior to termination; and
- 7.3.4 At the end of the "grace period" as set forth in the Service Agreement, and after providing Covered Entity the opportunity to retrieve or copy all PHI in the possession of Business Associate, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form. After the end of the "grace period" as set forth in the Service Agreement, Business Associate shall maintain no copies of the PHI.

## 8. MISCELLANEOUS.

- 8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- 8.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the Privacy, Security or Breach Notification Rule and HIPAA.
- 8.3 Survival. The respective rights and obligations of Business Associate under Section 7.3 of this Agreement shall survive the termination of this Agreement.
- 8.4 Interpretation. The provisions of this Agreement shall prevail over any provisions in the Service Agreement that may conflict or appear inconsistent with any provision in this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits compliance with the Privacy, Security, and Breach Notification Rules, and HIPAA.
- 8.5 No Third Party Beneficiaries. There are no third party beneficiaries, express or implied, under this Agreement.
- 8.6 Supersedes Prior Business Associate and Service Agreements. This Agreement, together with the Service Agreement, supersedes all prior business associate and service agreements between Business Associate and Covered Entity. No prior business associate agreement or service agreement executed by Business Associate and Covered Entity shall have any effect after the execution of this Agreement and the Service Agreement.
- 8.7 Entire Agreement. This Agreement, together with the Service Agreement, contain the entire understandings and agreements of the parties with respect to the subject matter hereof and supersedes all prior agreements, purchase orders (if any) or understandings related to the subject matter herein, oral or written (excluding any previously executed non-disclosure agreement or the like).
- 8.8 Relationship of Parties. Nothing in this agreement shall be construed to constitute or create an agency relationship, joint venture, partnership, or formal business organization of any kind and the rights and obligations of each party shall be only those expressly set forth herein. Neither party shall have authority to bind the other party, neither party is an agent of the other, and neither party assumes any liabilities of the other party.


8.9 Dispute Resolution. Any disputes arising under this Agreement that cannot be resolved amicably shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") in Philadelphia, Pennsylvania, before a single arbitrator and pursuant to the AAA's Commercial Arbitration Rules.

8.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile or electronic (PDF) signatures shall be treated as original signatures. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected on this Agreement as the signatories thereto.


9. Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, BUSINESS ASSOCIATE SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST OR ANTICIPATED PROFITS, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER BUSINESS ASSOCIATE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

**Business Associate**

Signature:   
Signed By: Bradley S. Pliner, CEO  
Date: 3/21/2022

**Covered Entity**

Signature:   
Signed By: Charise Monge M.Ed.,LAC LMHCA  
Date: 3/21/22