

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is dated as of [REDACTED], 20 [REDACTED] by and between Foundation for Cognitive Therapy and Research d/b/a Beck Institute for Cognitive Behavior Therapy, a Pennsylvania nonprofit corporation having a mailing address of 1 Belmont Avenue, Suite 700, Bala Cynwyd, PA 19004 (the “Company”), and [REDACTED], a [REDACTED] [REDACTED] having a mailing address of [REDACTED] (together with its subsidiaries and affiliates, collectively, the “Prospective Partner”) (with each of the Company and the Prospective Partner being a “Party” and collectively, the “Parties”).

WHEREAS, in connection with the consideration and/or negotiation of a possible business relationship, agreement or transaction between the Parties (each, a “Possible Transaction”), each of the Parties (each a “Disclosing Party”) is prepared to make available to the other Party (the “Receiving Party”) certain information concerning non-public, confidential or proprietary information regarding the business, financial condition, operations, assets and liabilities of the Disclosing Party; and

WHEREAS, as a condition to such information being furnished to the Receiving Party and its directors, managers, officers, employees, agents or advisors (including, without limitation, attorneys, accountants, consultants, bankers and financial advisors) (collectively, “Representatives”), the Receiving Party agrees to treat any information concerning the Disclosing Party (whether prepared by the Disclosing Party, its Representatives or otherwise and irrespective of the form of communication) that has been or, in the future, is furnished to the Receiving Party or to its Representatives by or on behalf of the Disclosing Party in connection with the Possible Transaction (herein collectively referred to as the “Confidential Information”) in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Parties, intending to be legally bound, hereby agrees as follows:

Section 1. Definition of Confidential Information.

(a) The term “Confidential Information” also shall be deemed to include (i) any and all information concerning the Disclosing Party which has been or, in the future, is furnished by the Disclosing Party or any of its Representatives to the Receiving Party or any of its Representatives, orally or in writing (whatever the form or storage medium), including, without limitation, information concerning the Disclosing Party’s business, operations, markets, products, services, designs, documentation, technical data or other proprietary information relating to actual, planned or possible products or services, trade secrets, events, processes, inventions (whether or not patentable), computer software and programs (in object or source code form), databases, original works of authorship, confidential knowledge, know-how, ideas, research and development, financial information, results of operations, projections, strategies, marketing information, contracts, employee information, business plans or other subject matter pertaining to the Disclosing Party and/or information regarding actual, planned or possible customers, clients,

consultants, contractors, advertisers, licensees, distributors, retailers and other business associates of the Disclosing Party and/or their respective businesses, operations, activities or plans, and (ii) any and all notes, analyses, compilations, studies, interpretations or other documents prepared by the Receiving Party or its Representatives which contain, reflect or are based upon, in whole or in part, the Confidential Information described in clause (i).

(b) The term “Confidential Information” does not include information which (i) is common knowledge with respect to companies operating in the industry in which the Disclosing Party conducts its business, (ii) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party or its Representatives to the public or any third party in violation of this Agreement, (iii) was rightfully within the Receiving Party’s or its Representatives’ possession prior to its being furnished to the Receiving Party by or on behalf of the Disclosing Party (as reasonably demonstrated by written evidence with respect thereto), provided that the source of such information was not known by the Receiving Party to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other party with respect to such information, (iv) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or any of its Representatives, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other party with respect to such information, (v) is independently developed by the Receiving Party or its Representatives without use of or reference to the Confidential Information or (vi) is required or requested to be disclosed by the Receiving Party by a governmental agency or law or other regulatory body as provided in Section 3(b), so long as the Receiving Party complies with the requirements of such section.

Section 2. Use of Confidential Information. The Receiving Party hereby agrees that the Receiving Party and its Representatives shall (a) use the Confidential Information solely for the purpose of evaluating a Possible Transaction between the Disclosing Party and the Receiving Party, (b) hold the Confidential Information of the Disclosing Party in trust and keep it confidential, (c) use the same means they use to protect their own confidential information, but in any event not less than reasonable means, to prevent the disclosure by them and any of their Representatives of the Confidential Information communicated to them by the Disclosing Party and its Representatives, and (d) not copy or reproduce, or permit to be copied or reproduced, in any way, any part of the Confidential Information of the Disclosing Party except in accordance with and for the purposes set forth in this Agreement. The Receiving Party hereby agrees that the Receiving Party and its Representatives will not disclose any of the Confidential Information in any manner whatsoever; provided, that any of such information may be disclosed by the Receiving Party to its Representatives who have a legitimate need to know such information for the sole purpose of evaluating a Possible Transaction with the Disclosing Party and who agree to keep such information confidential. In any event, the Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives, and each Party agrees, at its sole expense, to take commercially reasonable measures to restrain its Representatives from prohibited or unauthorized disclosure or use of the Confidential Information of the Disclosing Party.

Section 3. Confidentiality.

(a) Each of the Parties agrees that, without the prior written consent of the other Party, it and its Representatives will not disclose to any other person the fact that the Confidential Information has been made available to it, that discussions or negotiations are taking place concerning a Possible Transaction involving the Parties or any of the terms, conditions or other facts with respect thereto (including the status thereof), provided that the Parties may make such disclosure if required by law or the rules of any securities exchange or market. The term “person” as used in this Agreement shall be broadly interpreted to include the media and any corporation, partnership, group, individual or other entity.

(b) In the event that the Receiving Party or any of its Representatives is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the Receiving Party shall use reasonable efforts to provide the Disclosing Party with prompt written notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this letter agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party or any of its Representatives is nonetheless, based on the advice of counsel, required to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty, the Receiving Party or its Representatives may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information that such counsel advises the Receiving Party is legally required to disclose, provided that the Receiving Party exercises its reasonable efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the Disclosing Party (at the Disclosing Party’s expense) to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal.

Section 4. Ownership of Confidential Information; No Further Rights. The Confidential Information shall at all times be the applicable Disclosing Party’s sole and exclusive property, notwithstanding disclosure thereof to the Receiving Party pursuant to the terms of this Agreement. Nothing contained in this Agreement shall be construed to (a) grant or confer upon the Receiving Party any right, by license or otherwise, to make, or permit others to make, any use whatsoever of the Confidential Information of the Disclosing Party other than as expressly contemplated by this Agreement or by any other written agreement executed after the date hereof, or (b) constitute a commitment by the Receiving Party to enter into any contractual arrangement beyond that expressly set forth herein.

Section 5. Return of Confidential Information; Ownership. If either Party to this Agreement decides that it does not wish to proceed with a Possible Transaction with the other Party, such Party shall promptly inform the other Party of that decision. In that case, or at any time upon the request of the Disclosing Party for any reason, the Receiving Party shall promptly deliver to the Disclosing Party all Confidential Information (and all copies thereof) furnished to the Receiving Party or its Representatives by or on behalf of the Disclosing Party and shall continue to maintain the confidentiality of all other Confidential Information prepared by the Receiving Party or its Representatives under the terms of this Agreement. Upon request by the

Disclosing Party, the Receiving Party shall confirm in writing that it has returned or destroyed all Confidential Information (or continues to maintain the confidentiality of that Confidential Information prepared by the Receiving Party or its Representatives) and all copies thereof, in its possession. Notwithstanding the foregoing, the Receiving Party and its Representatives may retain copies of Confidential Information stored in standard archival or computer back-up systems or retained pursuant to such Person's normal document retention practices, for litigation and regulatory purposes or to the extent required by applicable law, provided that all such information retained by the Receiving Party or its Representatives shall continue to be held subject to the terms and conditions of this Agreement. All Confidential Information shall remain at all times the sole and exclusive property of the Disclosing Party and the Receiving Party shall acquire no rights in or to such Confidential Information by reason of its disclosure hereunder.

Section 6. No Warranties. The Receiving Party understands and acknowledges that neither the Disclosing Party nor any of its Representatives (including, without limitation, any of the Disclosing Party's directors, managers, officers, partners, members, shareholders, employees and agents) makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. The Receiving Party agrees that neither the Disclosing Party nor any of its Representatives shall have any liability to the Receiving Party or to any of its Representatives relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom. Only those representations or warranties that are made in a final written definitive agreement governing any Possible Transaction contemplated hereby, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, shall have any legal effect.

Section 7. Communications to Disclosing Party; Notification. The Receiving Party agrees not to initiate or maintain contact (except for those contacts made in the ordinary course of business) with any officer, director, manager, partner, member, shareholder, employee or agent of the Disclosing Party regarding its business, operations, prospects or finances, except with the express permission of the Representative(s) of the Disclosing Party identified in Section 10. It is understood that the Representative(s) of the Disclosing Party identified in Section 10 will arrange for appropriate contacts for due diligence purposes. Each Party agrees to give the other Party prompt notice of any violation of this Agreement, including, without limitation, any unauthorized disclosure or use of the other Party's Confidential Information.

Section 8. No Agreement. Each of the Parties to this Agreement understands and agrees that no contract or agreement providing for any Possible Transaction involving the Parties shall be deemed to exist between the parties unless and until a final written definitive agreement has been executed and delivered, and each of the Parties to this Agreement hereby waive in advance any claims (including, without limitation, breach of contract) in connection with any Possible Transaction involving such Party unless and until the Parties shall have entered into a final written definitive agreement. Each of the Parties to this Agreement further acknowledges and agrees that the other Party shall have the right to terminate discussions and negotiations with the other party at any time. Neither this section nor any other provision in this Agreement may be waived or amended except by written consent of both of the Parties to this Agreement, which consent shall specifically refer to this section (or such provision) and explicitly make such waiver or amendment.

Section 9. Waiver. It is understood and agreed that no failure or delay by one Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 10. Notification. Unless otherwise agreed to by a disclosing Party, in writing, all (i) communications regarding any Possible Transaction, (ii) requests for additional information, (iii) arrangements for facility tours or management meetings and (iv) discussions or questions regarding procedures, shall be submitted (x) in the case of the Company, to Lisa Pote, Executive Director (telephone: 610-664-3020 x223 email: lpote@beckinstitute.org, or to such individual at the address for the Company set forth in the preamble of this Agreement, and (y) in the case of the Prospective Partner, to [REDACTED], [REDACTED] (telephone: [REDACTED], email: [REDACTED]), or to such individual at the address for the Prospective Partner set forth in the preamble of this Agreement, or to any of their respective designees whom one Party identifies to the other Party.

Section 11. Remedies. It is further understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement by a Party or any of its Representatives and that the other Party shall be entitled to seek equitable relief, including injunction and specific performance, as a remedy for any such breach (without the need to post any bond in connection therewith). Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this Agreement but shall be in addition to all other remedies available at law or equity to such Party. Each Receiving Party shall indemnify and hold the Disclosing Party and its officers, directors, managers, shareholders, partners, members, employees, agents and representatives forever harmless from and against any and all losses actually sustained or incurred by the Disclosing Party relating to, resulting from or otherwise arising from a breach of this Agreement by the Receiving Party or the Receiving Party's Representatives.

Section 12. Miscellaneous. This Agreement does not confer any rights or remedies upon any person or entity other than the Parties. This Agreement is for the benefit of each of the Parties to this Agreement and its directors, officers, stockholders, partners, members, owners, affiliates and agents and shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Each of the Parties to this Agreement also hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania and of the United States of America located therein for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and each Party agrees not to commence any action, suit or proceeding relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. registered mail to its address set forth herein shall be effective service of process for any action, suit or proceeding brought against either Party in any such court. This Agreement shall be binding on each Party and its successors and assigns. Neither Party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other Party. Only a written instrument executed by the Parties may modify this Agreement. All of the provisions of this Agreement are intended to be distinct and severable. If any provision of this Agreement is or is declared to be invalid or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such invalidity or unenforceability, and such invalidity or unenforceability shall not affect either the balance of such provision, to the extent it

is not invalid or unenforceable, or the remaining provisions hereof, nor render invalid or unenforceable such provision in any other jurisdiction. If a Provider brings any legal action against a Recipient to enforce this Agreement, and the Provider is the prevailing party in such action, then the Provider will be entitled to recover from the Recipient its reasonable costs and attorneys' fees, including those incurred on any appeal.

Section 13. Survival; Entire Agreement. The obligations of confidentiality set forth herein shall survive for a period of three (3) years from the date of disclosure. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof and supersedes any prior agreement between the parties concerning the subject matter herein.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Mutual Confidentiality and Non-Disclosure Agreement as of the date first written above.

COMPANY:

FOUNDATION FOR COGNITIVE THERAPY
AND RESEARCH (d/b/a Beck Institute for
Cognitive Behavior Therapy)

By: _____
Name:
Title:

PROSPECTIVE PARTNER:

[REDACTED]

By: _____
Name:
Title: