

## **Business Associate Agreement Between CSS & Covered Entity**

This Agreement (the “BAA”) is entered into as of **[Insert Date]**, as a result of the Pacific Business Group on Health (PBGH) Survey Vendor Agreement (the “Survey Vendor Agreement”) between PBGH and the Center for the Study of Services (“Research Company”) to conduct the Patient Assessment Survey (PAS), and the participation of **[Insert Group Name]** (“Covered Entity”) in the PAS.

This BAA is effective upon execution by and between Research Company and Covered Entity. For purposes of this BAA, Research Company shall be considered a Business Associate of Covered Entity.

Covered Entity and Research Company mutually agree to the terms of this BAA to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations (45 C.F.R. Parts 160-64), the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and any regulations issued thereunder.

### **HIPAA PRIVACY AND SECURITY REQUIREMENTS**

#### **A. Definitions.**

- (i). The “Privacy Rule” shall mean the HIPAA regulations governing individually identifiable health information (45 C.F.R. Parts 160-164), the requirements of the HITECH Act and any regulations issued thereunder.
- (ii). “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy Rule, including 45 C.F.R. § 160.103, created or received by Research Company under the terms of this BAA.
- (iii). “Covered Entity” shall have the meaning given to such term under the Privacy Rule, including 45 C.F.R. § 160.103.
- (iv). “Business Associate” shall have the meaning given to such term under the Privacy Rule, including 45 C.F.R. § 160.103.
- (v). “Individual” shall have the same meaning given to such term under the Privacy Rule, including 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- (vi). “Breach” shall have the meaning given to such term under the HITECH Act § 13400 and any regulations issued thereunder.

**B. Obligations of Research Company under the Privacy Rule.** Pursuant to Covered Entity’s participation in the PAS, Covered Entity may be required to disclose certain PHI to Research Company, and Research Company may receive such PHI or create PHI on Covered Entity’s behalf in connection with its obligations under the Survey Vendor Agreement. Research Company shall use appropriate safeguards to protect the privacy and provide for the security of PHI disclosed to Research Company pursuant to this Section in compliance with the Privacy Rule. Research Company may use and disclose PHI created or received pursuant to the Survey Vendor Agreement only as follows:

- (i). To Carry Out the Purposes of the Survey Vendor Agreement. Research Company may use and disclose PHI received from Covered Entity or created on behalf of Covered Entity to perform its

obligations under the Survey Vendor Agreement solely in accordance with the specifications set forth in this Section or as required by law.

- (ii). Nondisclosure. Research Company shall not use or further disclose the PHI received from or created on behalf of Covered Entity in a manner that would violate the requirements of the Privacy Rule (including the minimum necessary requirements).
- (iii). Safeguards. Research Company shall use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for under this BAA, including adopting policies and procedures regarding the safeguarding of PHI and providing training to relevant employees, independent contractors and subcontractors on such policies and procedures to prevent the improper use or disclosure of PHI. Research Company shall implement appropriate physical and technical safeguards to protect PHI from unauthorized access and to protect against loss due to physical accidents or disasters.
- (iv). Reporting Improper Disclosures. Research Company shall report in writing to Covered Entity any use or disclosure of the PHI not provided for under this BAA, of which Research Company becomes aware promptly but in no event later than five (5) Business Days of first learning of any such use or disclosure. Research Company shall notify Covered Entity if the disclosure constitutes a reportable breach as defined by the HITECH Act.
- (v). Mitigation. Research Company agrees to mitigate to the extent practicable, any harmful effect that is known to Research Company of a use or disclosure of PHI by Research Company in violation of the requirements of this Section.
- (vi). Use of Agents and Subcontractors. Research Company shall ensure that any Subcontractors or agents to whom Research Company provides PHI created or received pursuant to this BAA agree in writing to the same restrictions and conditions, as set forth in this Section, that apply to Research Company with respect to such PHI.
- (vii). Availability of Information to Covered Entity. Within ten (10) Business Days of receipt of a request from Covered Entity, Research Company shall, in accordance with such Covered Entity request, make PHI available to Covered Entity, provide Covered Entity access to PHI, and/or make a copy of PHI available to Covered Entity, all in accordance with the Privacy Rule, including 45 C.F.R. § 164.524.
- (viii). Amendment of PHI. If an individual requests an amendment to PHI directly from Research Company, Research Company shall not amend the PHI unless directed by Covered Entity. Covered Entity shall have full discretion to determine whether the amendment shall occur. If Research Company receives, directly or indirectly, a request from an individual requesting an amendment to PHI, Research Company shall notify Covered Entity in writing promptly after and of such individual's request for an amendment to PHI no later than ten (10) business days of receiving such request.
- (ix). Accounting of PHI. Within ten (10) business days of notice by Covered Entity of a request for an accounting of disclosures of PHI by Research Company or its subcontractors, Research Company shall make available the account of such disclosures to Covered Entity as requested for Covered Entity to fulfill its obligations to provide an accounting pursuant to the Privacy Rule, including 45 C.F.R. § 164.528. Research Company shall implement a process that allows for such an accounting. If an individual requests an accounting of disclosures of PHI directly from Research Company, Research Company shall not provide the individual the account of such disclosures unless directed by Covered Entity. Covered Entity shall have full discretion to determine whether the individual shall be given such accounting. If Research Company receives, directly or indirectly, a request from an individual requesting an accounting of PHI, Research Company

notify Covered Entity in writing promptly after and of such individual's request for an accounting of disclosures of PHI no later than ten (10) business days of receiving such request.

- (x). Availability of Books and Records. Research Company shall make its internal practices, books, and records relating to the use and disclosure of PHI received or created pursuant to this BAA available to the Secretary of Health and Human Services for purposes of determining Covered Entity's (or any covered entities that Covered Entity services) compliance with the Privacy Rule.
- (xi). Record Retention. Research Company shall retain all PHI received from Covered Entity for 120 days after project completion, per the Survey Vendor Agreement. Data backup tapes containing PHI will be retained for two years and then destroyed.
- (xii). Minimum Necessary Amount of PHI. Research Company shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purposes of the request, use or disclosure. Research Company shall comply with minimum use requirements set forth in the HITECH Act § 13405(b) and any regulations issued thereunder.
- (xiii). Audits and Inspection. Notwithstanding any provision set forth in this BAA to the contrary, if Covered Entity, in good faith, believes that Research Company has breached any provision of this Section, then upon providing five (5) business days' written notice, Covered Entity may inspect Research Company's facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this BAA, for the purpose of determining whether Research Company has complied with this Section.

**C. Obligations of Covered Entity under the Privacy Rule.**

- (i) Covered Entity shall notify Research Company of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Research Company's use or disclosure of PHI.
- (ii) Covered Entity shall notify Research Company of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Research Company's use or disclosure of PHI.
- (iii) Covered Entity shall notify Research Company of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Research Company's use or disclosure of PHI.
- (iv) Covered Entity shall not request Research Company to use or disclosure PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Research Company may use or disclose PHI as permitted by the Survey Vendor Agreement, for data aggregation or management and administrative activities of Research Company.

**D. Termination.**

- (i). Upon termination of this BAA for any reason, Research Company shall return and/or destroy all PHI received pursuant to this BAA that Research Company maintains in any form, and shall retain no copies of such PHI; or, if return or destruction is not feasible, Research Company shall notify Covered Entity in writing and continue to extend protections of this Section to such information, and shall certify to Covered Entity in writing that it will limit further use or disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as Research Company maintains such PHI. Upon the return to Covered Entity or destruction of all PHI, Research Company shall certify to Covered Entity in writing its return to Covered

Entity or destruction of all such PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Research Company.

- (ii). Subject to Section (iii), Covered Entity may terminate this BAA, if Research Company violates a material term of this Section.
- (iii). Cure. Upon Covered Entity's knowledge of a material breach by Research Company of this Section, Research Company shall have the opportunity to cure such violation, as set forth in the BAA, or if there is no such provision to cure, then within thirty (30) days of notice by Covered Entity to Research Company of such violation. If such violation is not cured within the time period set forth in the BAA or this Section, Covered Entity may declare a material breach of the BAA and terminate the BAA or, if not feasible to terminate the BAA, report the problem to the Secretary of U.S. Health and Human Services, as set forth in 45 C.F.R. § 164.504(e)(1)(ii)(B).
- E.** Indemnity. Research Company will indemnify and hold harmless Covered Entity and any Covered Entity affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Section by Research Company or any subcontractor, agent, person or entity under Research Company's control.
- F.** Modifications to Privacy Rule. If the Privacy Rule is modified in any way impacting this Section, the Parties shall as soon as reasonably possible, but no later than the compliance date for such modifications, amend this Section to ensure compliance with such modifications.
- G.** Interpretation of this BAA. Any ambiguity in the terms set forth in this Section shall be construed to permit Covered Entity's full compliance with the Privacy Rule.
- H.** Other HIPAA Administrative Simplification Regulations. As soon as reasonably possible but no later than the compliance date for any other HIPAA Administrative Simplification regulations, the Parties shall review this BAA, and, as necessary, modify this BAA to incorporate any relevant provisions.
- I.** Conflicts. The terms and conditions of this Section will override and control any conflicting term or condition of any part of the BAA. All non-conflicting terms and conditions of the BAA remain in full force and effect.

**IN WITNESS WHEREOF,** Covered Entity and Research Company execute this BAA in multiple originals to be effective on the last date written below.

**RESEARCH COMPANY**

**COVERED ENTITY**

By: Paul Kallaur

By: \_\_\_\_\_

Title: Director of Healthcare Research

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_