

## **HIPAA BUSINESS ASSOCIATE ADDENDUM**

This **HIPAA BUSINESS ASSOCIATE ADDENDUM** (“HIPAA Addendum”) is entered into by and between you (“Covered Entity”) and Pacifica Labs Inc. (“Business Associate”). This HIPAA Addendum shall be effective as of the date on which Covered Entity signs below or acknowledges its acceptance of the online terms hereof by clicking through Business Associate’s online acceptance process, whichever is earlier. This HIPAA Addendum, which supersedes any previous business associate agreement between the parties, amends, supplements, and is made a part of the Medical Professionals Agreement by and between Covered Entity and Business Associate, as the same may be amended from time to time (the “Medical Professionals Agreement”).

### **RECITALS**

**WHEREAS**, Covered Entity is a “covered entity” as that term is defined at 45 C.F.R. § 160.103;

**WHEREAS**, in connection with Business Associate providing services to Covered Entity pursuant to the Master Agreement, Business Associate may, on behalf of Covered Entity, create, receive, maintain, or transmit certain Protected Health Information (“PHI”) as defined below;

**WHEREAS**, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI in compliance with the Health Insurance Portability and Accountability Act of 1996, Subtitle D of the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), and the regulations and other guidance promulgated under both laws by the U.S. Department of Health and Human Services (collectively, “HIPAA”), as well as other applicable federal and state laws;

**WHEREAS**, the purpose of this HIPAA Addendum is to satisfy certain standards and requirements of HIPAA including, but not limited to, 45 C.F.R. §§ 164.308(b), 164.314(a), 164.502(e), and 164.504(e); and

**WHEREAS**, this HIPAA Addendum shall be applicable only in the event that Business Associate meets, with respect to Covered Entity, the definition of “business associate” set forth in 45 C.F.R. § 160.103.

**NOW, THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this HIPAA Addendum, the parties agree as follows:

### **I. DEFINITIONS**

- A. “Breach” shall have the meaning given to the term “breach” at 45 C.F.R. § 164.402, as applied to the Unsecured PHI created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- B. “Data Aggregation” shall have the meaning given to the term “data aggregation” at 45 C.F.R. § 164.501.
- C. “Designated Record Set” shall have the meaning given to the term “designated record set” at 45 C.F.R. § 164.501.
- D. “ePHI” shall have the meaning given to the term “electronic protected health information” at 45 C.F.R. § 160.103, as applied to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- E. “Individual” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 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).
- F. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- G. “Protected Health Information” or “PHI” shall have the meaning given to the term “protected health information” at 45 C.F.R. § 160.103, as applied to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- H. “Required by Law” shall have the meaning given to the term “required by law” at 45 C.F.R. § 164.103.
- I. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.
- J. “Security Incident” shall have the meaning given to the term “security incident” at 45 C.F.R. § 164.304, as applied to the ePHI created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- K. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- L. “Subcontractor” shall have the meaning given to the term “subcontractor” at 45 C.F.R. § 160.103.

M. “Unsecured PHI” shall have the meaning given to the term “unsecured protected health information” at 45 C.F.R. § 164.402, as applied to the PHI created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

N. Any other terms used, but not otherwise defined, in this HIPAA Addendum shall have the same meaning as those terms in HIPAA. Any inconsistency in the definition of a term shall be resolved in favor of a meaning that permits compliance with HIPAA.

## **II. PERMITTED USES AND DISCLOSURES OF PHI**

Except as otherwise limited in this HIPAA Addendum or the Master Agreement, Business Associate may do any or all of the following:

A. Use or Disclosure Under the Master Agreement. Use or disclose PHI to perform functions, activities, or services for, or on behalf of Covered Entity, to the extent specified in the Master Agreement, provided that such use or disclosure would not violate the Privacy Rule or any applicable state law if done by Covered Entity. Notwithstanding the above, Business Associate may use and disclose PHI for the purposes identified in paragraphs (B), (C), and (E) of this Section II even if Covered Entity could not do so under the Privacy Rule.

B. Use for Administration or Legal Responsibilities. Use PHI, but only to the minimum extent necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

C. Disclosure for Administration or Legal Responsibilities. Disclose PHI, but only to the minimum extent necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that:

(1) The disclosures are Required by Law; or

(2) Business Associate obtains reasonable assurances from the agent, person, or other entity, including a Subcontractor, to whom the PHI is disclosed that it shall remain confidential and shall be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the agent, person, or other entity, including a Subcontractor (which purpose must be consistent with the limitations imposed upon Business Associate pursuant to this HIPAA Addendum), and that the agent, person, or other entity, including a Subcontractor, agrees to promptly notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

D. Use for Reporting of Violations. Use PHI to report violations of law to appropriate federal, state, and local authorities, consistent with 45 C.F.R. § 164.502(j).

E. Use for Data Aggregation Services. Use PHI to provide Data Aggregation services relating to the health care operations of Covered Entity, as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

F. De-identified Information. Use PHI to de-identify such PHI, in accordance with 45 C.F.R. § 164.514(a)-(c), for Business Associate's own purposes.

G. HIPAA Authorizations. Use and disclose PHI in connection with requesting that an Individual sign a HIPAA authorization that meets the requirements of 45 C.F.R. § 164.508(b)-(c).

### **III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

A. Limited by Agreement and Law. Business Associate may not use or disclose PHI other than as permitted or required by this HIPAA Addendum or as Required by Law.

B. Compliance with HIPAA. To the extent that Business Associate is responsible for carrying out an obligation of Covered Entity under HIPAA pursuant to this HIPAA Addendum or the Master Agreement, Business Associate shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of such obligation.

C. Appropriate Safeguards. Business Associate shall use appropriate safeguards and, where applicable, comply with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by this HIPAA Addendum.

D. Reporting of Improper Use or Disclosure of PHI, Security Incident, or Breach of Unsecured PHI.

(1) Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by this HIPAA Addendum of which it becomes aware and any Security Incident of which it becomes aware, including any Breach of Unsecured PHI (collectively, a "Reportable Event"). All such reports shall be made without unreasonable delay and in no case later than fifteen (15) business days after Business Associate's discovery of a Reportable Event.

(2) Business Associate shall cooperate with Covered Entity in investigating a Reportable Event and assist Covered Entity in determining whether a Reportable Event constitutes a Breach of Unsecured PHI.

(3) Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Reportable Event.

(4) In the case of a Breach of Unsecured PHI, Business Associate shall provide Covered Entity with the information required pursuant to 45 C.F.R. § 164.410(c) and any other related information reasonably requested by Covered Entity.

(5) The parties acknowledge and agree that this paragraph (D) constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents, such as pings or failed log-in attempts, for which additional notice to Covered Entity by Business Associate shall be required only upon request.

E. Subcontractors. If Business Associate discloses PHI to a Subcontractor or allows a Subcontractor to create, receive, maintain, or transmit PHI on its behalf, Business Associate shall require the Subcontractor to agree to substantially the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information by entering into a written arrangement with Subcontractor that complies with 45 C.F.R. §§ 164.314(a) and 164.504(e).

F. Access to PHI. To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate shall provide access to such PHI to Covered Entity in a time and manner that meets the requirements of 45 C.F.R. § 164.524 and applicable state law.

G. Amendment of PHI. To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate shall make amendment(s) to such PHI in a Designated Record Set that Covered Entity directs or agrees to in a time and manner that meets the requirements of 45 C.F.R. § 164.526.

H. Accounting of Disclosures. Business Associate shall provide to Covered Entity an accounting of the disclosures of an Individual's PHI in a time and manner that meets the requirements of 45 C.F.R. § 164.528 and, as of the applicable effective date, Section 13405(c) of HITECH and any regulations promulgated thereunder.

I. Documentation. All documentation that is required by this HIPAA Addendum and HIPAA shall be retained by Business Associate for six (6) years from the date of creation or when it was last in effect, whichever is later.

J. Governmental Access to Records. Business Associate shall make its internal policies, practices, books, and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining compliance with HIPAA. No attorney-client, accountant-client, or other legal privilege shall be deemed to have been waived by Business Associate by virtue of Business Associate's compliance with this provision.

K. Minimum Necessary. Business Associate agrees that it shall comply with HIPAA's minimum necessary requirements.

L. Communication with Other Business Associates. In connection with the performance of its services, activities, and/or functions to or on behalf of Covered Entity, Business Associate may disclose information, including PHI, to other business associates of Covered Entity. Likewise, Business Associate may use and disclose information, including PHI, received from other business associates of Covered Entity, as if this information was received from, or originated with, Covered Entity. The parties agree that it is the responsibility of Covered Entity to secure and maintain business associate agreements with its other business associates.

#### **IV. OBLIGATIONS OF COVERED ENTITY**

A. Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices, to the extent that such limitations may affect Business Associate's use or disclosure of PHI.

B. Notification of Revocations. Covered Entity shall notify Business Associate of any changes in, or revocation of, authorization by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

C. Notification of Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by 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.

D. Permissible Requests. Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under HIPAA or other applicable federal or state law if done by Covered Entity.

#### **V. TERM AND TERMINATION**

A. Term. The term of this HIPAA Addendum shall commence as of the Effective Date, be coterminous with the Master Agreement, and continue in full force and effect from year to year, but shall terminate as of the earliest occurrence of any of the following:

- (1) The Master Agreement expires or is terminated with or without cause;
- (2) This HIPAA Addendum is terminated for cause as described in paragraph (B) below;

- (3) The parties mutually agree to terminate this HIPAA Addendum; or
- (4) This HIPAA Addendum is terminated under applicable federal, state, or local law.

B. Termination for Cause.

(1) Upon Covered Entity's determination of a breach of a material term of this HIPAA Addendum by Business Associate, Covered Entity shall provide Business Associate written notice of that breach in sufficient detail to enable Business Associate to understand the specific nature of that breach and afford Business Associate an opportunity to cure the breach; provided, however, that if Business Associate fails to cure the breach within thirty (30) days of receipt of such notice, Covered Entity may terminate this HIPAA Addendum and the Master Agreement.

(2) Upon Business Associate's determination of a breach of a material term of this HIPAA Addendum by Covered Entity, Business Associate shall provide Covered Entity written notice of that breach in sufficient detail to enable Covered Entity to understand the specific nature of that breach and afford Covered Entity an opportunity to cure the breach; provided, however, that if Covered Entity fails to cure the breach within thirty (30) days of receipt of such notice, Business Associate may terminate this HIPAA Addendum and the Master Agreement.

C. Effect of Termination

(1) Following termination of this HIPAA Addendum for any reason, Business Associate shall return or destroy all PHI that Business Associate still maintains in any form. Except as provided for in paragraph (C)(2) below, Business Associate shall retain no copies of such PHI.

(2) If return or destruction of any or all PHI is not feasible, Business Associate shall:

(i) Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(ii) Return to Covered Entity or destroy the remaining PHI that Business Associate still maintains in any form;

(iii) Extend the protections of this HIPAA Addendum to any retained PHI, continue to use appropriate safeguards, and comply with the Security Rule with respect to ePHI in order to prevent use or disclosure of the retained PHI other than as provided for in this Section V(C)(2), for as long as Business Associate retains the PHI;

(iv) 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 forth in Sections II(B) and II(C) of this HIPAA Addendum that applied prior to termination; and

(v) Return to Covered Entity or destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(3) These provisions shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

## **VI. MISCELLANEOUS**

A. Regulatory References. A reference in this HIPAA Addendum to a section in HIPAA means the section as in effect or as amended at the time this HIPAA Addendum is executed or amended.

B. Amendment; No Waiver. Upon the effective date of any federal statute amending or expanding HIPAA, any guidance or temporary, interim final or final regulations promulgated under HIPAA, or under any federal statute amending or expanding HIPAA (collectively, the “HIPAA Regulations”) that are applicable to this HIPAA Addendum or any amendments to the HIPAA Regulations, this HIPAA Addendum shall be automatically amended, such that the obligations imposed on Covered Entity and Business Associate shall remain in compliance with such requirements, unless the parties agree otherwise by mutual consent. The parties shall take all necessary action to expressly reflect such automatic amendments to this HIPAA Addendum from time to time. Except as provided otherwise in this paragraph (B), no waiver, change, modification, or amendment of any provision of this HIPAA Addendum shall be made unless it is in writing and is signed by the parties hereto. The failure of either party at any time to insist upon strict performance of any condition, promise, agreement, or understanding set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same condition, promise, agreement, or understanding at a future time.

C. Survival. All of the respective rights and obligations of Business Associate under Section III(I) (Documentation) and Section V(C) (Effect of Termination) of this HIPAA Addendum shall survive the termination of this HIPAA Addendum.

D. Interpretation. Any ambiguity in this HIPAA Addendum shall be resolved in favor of a meaning that permits compliance with HIPAA. The titles and headings set forth at the beginning of each section hereof are inserted for convenience of reference only and shall in no way be construed as a part of this HIPAA Addendum or as a limitation on the scope of the particular provision to which it refers. In the event of an inconsistency between the provisions of this HIPAA Addendum and the mandatory terms of HIPAA, as may be expressly amended from

time-to-time by the Secretary, or as a result of interpretations by the Secretary, a court, or another regulatory agency with authority over the parties, the interpretation of the Secretary, such court, or regulatory agency shall prevail.

E. Entire Agreement; Effect on Master Agreement. This HIPAA Addendum, together with the Master Agreement and any statements of work, exhibits, or other addenda thereto, sets forth the entire understanding between the parties and supersedes any previous or contemporaneous understandings, commitments, representations, warranties, or agreements, written or oral, regarding the subject matter hereof. No representations, agreements, or understandings of any kind, either written or oral, except as set forth or incorporated by reference into this HIPAA Addendum or the Master Agreement, have been relied upon in entering into this HIPAA Addendum, nor shall any such representations, agreements, or understandings be binding upon the parties unless expressly contained herein or therein. Notwithstanding any provision to the contrary in this HIPAA Addendum or the Master Agreement, to the extent that any term in this HIPAA Addendum is directly contradictory to a term in the Master Agreement, the term in this HIPAA Addendum shall supersede such contradictory term to the extent necessary to permit compliance with HIPAA.

F. Relationship of Parties. The parties to this HIPAA Addendum are independent contractors. None of the provisions of this HIPAA Addendum are intended to create, nor shall they be interpreted or construed to create, any relationship between Covered Entity and Business Associate other than that of independent contractors. Except as otherwise expressly set forth herein, neither party, nor any of its representatives, shall be deemed to be the agent, employee, or representative of the other party.

G. No Third Party Beneficiaries. This HIPAA Addendum is between the parties hereto. Nothing express or implied in this HIPAA Addendum is intended to confer, nor shall anything herein confer, any rights, remedies, obligations, or liabilities whatsoever upon any person other than Covered Entity and Business Associate and any respective successors and assigns.

H. Invalid or Unenforceable Provision. The provisions of this HIPAA Addendum shall be severable. The invalidity or unenforceability of any particular provision or portion of such provision of this HIPAA Addendum shall be construed, in all respects, as if such invalid or unenforceable provision or portion of such provision had been omitted, and shall not affect the validity and enforceability of the other provisions hereof or portions of that provision.

I. Assignment. The parties' rights and obligations with respect to assignment of this HIPAA Addendum shall be subject to the assignment provision set forth in the Master Agreement. In the event that the Master Agreement does not contain an assignment provision, neither party may assign its rights, or delegate its duties or obligations, under this HIPAA Addendum without the prior written consent of the other party, which consent shall not be

unreasonably withheld. This HIPAA Addendum shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors.

J. Applicable Law. This HIPAA Addendum shall be construed, administered, and governed by the governing law set forth in the Master Agreement, except to the extent preempted by applicable federal law. In the event that the Master Agreement does not identify the governing law, this HIPAA Addendum shall be construed, administered, and governed under the laws of the State of California, except to the extent preempted by applicable federal law.

K. Notices. All notices hereunder shall be in writing, and either delivered by email to the email address associated with the Covered Entity's Pacifica for Clinicians account, or to info@thinkpacific.com. Each party reserves the right to change address for receiving notice during the term of this HIPAA Addendum upon written notice to the other parties.

M. Counterparts. This HIPAA Addendum may be executed in separate counterparts, none of which need contain the signatures of both parties, and each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute and be one and the same instrument.