

## **BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (this "*Agreement*"), is by and between Customer ("*Covered Entity*") and Odiggo, Inc., d/b/a Sully.ai ("*Business Associate*"), each individually a "*Party*" and collectively the "*Parties*," and is effective as of the date that Customer checked the checkbox on Company's customer signup webpage, indicating Customer's acceptance of this Agreement (the "*Effective Date*").

### **RECITALS**

**WHEREAS**, Business Associate has entered into an agreement with Covered Entity for the purposes of performing certain services on behalf of Covered Entity (the "*Services Agreement*") and Business Associate may create, receive, maintain, or transmit Protected Health Information (defined below) in conjunction with the services being provided under the Services Agreement, thus necessitating a written agreement that meets applicable requirements of HIPAA (defined below);

**WHEREAS**, pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and all regulations promulgated thereunder, as amended from time to time (collectively, "*HIPAA*"); and

**WHEREAS**, Business Associate and Covered Entity desire to satisfy HIPAA's requirements through this Agreement and otherwise to address related matters regarding HIPAA.

### **AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual agreements and undertakings of the Parties, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

#### **1. Definitions.**

The following terms shall have the following meaning when used in this Agreement:

- a. "*Electronic Protected Health Information*" or "*ePHI*" shall have the same meaning given to such term as 45 C.F.R. § 160.103, limited to the information created, received, or maintained or transmitted from or on behalf of Covered Entity.
- b. "*Individual*" shall have the same meaning as the term "individual" in 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).
- c. "*Protected Health Information*" or "*PHI*" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, except limited to the information received from Covered Entity, or created, maintained or received on behalf of Covered Entity. For avoidance of doubt, PHI shall include ePHI.
- d. "*Subcontractor*" shall have the same meaning as the term "subcontractor" in 45 C.F.R. §160.103, except limited to any such individual or entity who creates, receives, maintains, or transmits PHI on behalf of Business Associate.

Any capitalized term not specifically defined herein shall have the same meaning as is set forth in 45 C.F.R. Parts 160 and 164, where applicable. The terms "use," "disclose" and "discovery," or derivations thereof, although not capitalized, shall also have the same meanings set forth in HIPAA.

## **2. Obligations and Activities of Business Associate.**

- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement, the Services Agreement, or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards and comply, where applicable, with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- c. Business Associate agrees to report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement, including, without limitation, Breaches of Unsecured PHI as required at 45 C.F.R. 164.410, and any Security Incident of which it becomes aware. The Parties acknowledge and agree that this Section 2(c) constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as such incidents do not result, to the extent Business Associate is aware, in unauthorized access, use or disclosure of Electronic PHI.
- d. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and § 164.308(b)(2), if applicable, Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to substantially the same restrictions, conditions, and requirements that apply to Business Associate under this Agreement with respect to such PHI.
- e. Business Associate agrees to make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524.
- f. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526.
- g. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.
- h. To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
- i. Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with HIPAA.

## **3. Permitted Uses and Disclosures by Business Associate.**

- a. Business Associate may only use or disclose PHI as necessary to perform its obligations under the Services Agreement. In addition, Business Associate is authorized to use PHI to de-identify the PHI in accordance with 45 C.F.R. 164.502(d) and 164.514(a)-(c). For the avoidance of doubt, such de-identified data will no longer be considered PHI.
- b. Business Associate may use or disclose PHI as permitted or Required By Law.

c. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.

d. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in subsections (e), (f) and (g), below.

e. Business Associate may use PHI for its proper management and administration or to carry out its legal responsibilities.

f. Business Associate may disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the information's confidentiality has been breached.

g. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

#### **4. Obligations of Covered Entity.**

a. Covered Entity shall promptly notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI, prior to the effective date of such revocation.

c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI, prior to the effective date of such restriction.

d. Covered Entity shall obtain any authorization or consents as may be Required by Law for any of the uses or disclosures of PHI pursuant to this Agreement or the Services Agreement.

e. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.

#### **5. Term and Termination.**

a. Term. The Term of this Agreement shall commence as of the Effective Date and shall terminate upon the termination of the Services Agreement or on the date Covered Entity terminates this Agreement for cause as authorized in subsection (b) of this Section 5, whichever is sooner.

b. Termination for Cause. Each Party authorizes termination of this Agreement by the other Party if a Party determines the other Party has breached a material term of this Agreement and the breach is not cured within thirty (30) days after the breaching Party's receipt of written notice of the alleged breach.

c. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall:

(i) Retain only that PHI which 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 Covered Entity's designee (to the extent permitted by HIPAA) if feasible, or, if feasible and agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form;

(iii) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 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 PHI;

(iv) Not use or disclose 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 3 (e) and (f), above, which applied prior to termination; and

(v) Return to Covered Entity, or, if agreed to by Covered Entity, destroy 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.

d. Survival. The obligations of Business Associate under this Section 5 shall survive the termination of this Agreement.

**6. Notices.** Any notice, consent, request or other communication required or permitted under this Agreement shall be in writing and delivered in the manner as set forth in the Services Agreement.

**7. Miscellaneous.**

a. Regulatory References. A reference in this Agreement to HIPAA means the provision as in effect or as amended.

b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of HIPAA and any other applicable law.

c. Interpretation. Any ambiguity in this Agreement shall be resolved to permit compliance with HIPAA.

d. Governing Law and Disputes. The construction, interpretation and performance of this Agreement and all transactions under this Agreement shall be governed and enforced pursuant to the laws of Delaware, without giving effect to its conflicts of laws provisions, except to the extent Delaware law is preempted by any provision of federal law, including HIPAA. The Parties agree that all disputes arising out of or relating to this Agreement will be subject to mandatory binding arbitration under the rules of Judicial Administration and Arbitration Services ("*JAMS*") in effect at the time of submission, as modified by this Section 6(d). The arbitration will be heard and determined by a single arbitrator selected by the Parties' mutual agreement, or, failing agreement within thirty (30) days following the date of the respondent's receipt of the claim, by JAMS. Such arbitration will take place in San Francisco, California. The arbitration award so given will be a final and binding determination of the dispute, and will be fully enforceable in any court of competent jurisdiction. Except in a proceeding to enforce the arbitration's results or as otherwise

required by law, neither Party nor any arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written agreement of both Parties.

e. No Third Party Beneficiary. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the Parties' respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

f. Controlling Provisions. In the event that it is impossible to comply with both the Services Agreement and this Agreement, the provisions of this Agreement shall control with respect to those provisions of each agreement that expressly conflict with regard to the subject matter herein. This Agreement shall supersede and replace any prior business associate agreements between the Parties, with respect to any actions of Business Associate after the Effective Date.

g. Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors, assigns, heirs, executors, administrators and other legal representatives.

h. Severability. In the event any provision of this Agreement is rendered invalid or unenforceable under any new or existing law or regulation, or declared null and void by any court of competent jurisdiction, the remainder of this Agreements' provisions shall remain in full force and effect if it reasonably can be given effect.