



## Federation of State Physician Health Programs

### FSPHP Research Information System (RIS) Participation Agreement

#### Physician Health PROGRAM (PHP) = "PROGRAM":

Participant Number:

Legal Name of PHP Organization:

Company Type (e.g., non-profit, LLC):

Address:

Contact Person:

Contact Telephone:

Contact Email:

Legal Notice should be sent to (name/title and email address, or "see above" if applicable):

#### Attachments to this Face Sheet:

Standard Terms and Conditions

Exhibit A: Data Elements

This Data Sharing Agreement (the "**Agreement**"), effective as of \_\_\_\_\_ 20\_\_\_\_, (the "**Effective Date**"), is by and between the Federation of State Physician Health PROGRAMs (FSPHP), with an office at 668 Main Street, Suite 8, #295, Wilmington, MA 01887 ("**FSPHP**"), and the PHP identified above (hereinafter, "**PROGRAM**"). FSPHP and PROGRAM are each referred to individually as a "**Party**" and collectively as the "**Parties**" to this Agreement.

#### 1. Definitions:

**For the purposes of this Agreement, the following terms shall be defined as follows:**

- "Data" means all de-identified information, records, files, content or information of PROGRAM, in any form or format, which PROGRAM makes available to FSPHP RIS in connection with this Agreement as described herein. Once submitted to FSPHP-RIS, such de-identified data may be combined with other data and will be

maintained by FSPHP-RIS as part of an aggregated dataset which shall be the property of FSPHP-RIS and shall be subject to the exclusive control of FSPHP-RIS. Notwithstanding the foregoing, PROGRAM shall retain rights to any and all original information and data, including de-identified data prior to submission, and nothing in this Agreement shall be construed to transfer ownership rights regarding PROGRAM's internal or underlying data to FSPHP.

- “De-Identified” describes data including health or health-related patient/PHP participant information (including program data) which has been modified to eliminate, remove or obscure patient identification or information which might be used to identify a particular individual, in compliance with 45 C.F.R. § 164.514(b)(2) and any applicable state or federal legal requirements, as applicable.
- “Data Repository” FSPHP shall develop a De-Identified data repository (“Repository”), defined herein as a system to collect and store certain de-identified information provided by Program in connection with this Agreement. As set forth below, PROGRAM agrees to supply De-Identified Data to FSPHP RIS and participate as a PROGRAM Participant under the terms and conditions of this Agreement.

## **2. FSPHP Research Information System.**

**2.1 FSPHP Participation.** FSPHP shall create a standardized database system to allow for the export and aggregation of PHP participant outcome information. This system will enable FSPHP to organize data and share summary data back to PHPs/HPPs to comprehensively monitor and analyze participant outcomes, addressing key questions related to the utilization of PHPs/HPPs including overall demographics, medical specialties, presenting problems, and participant outcomes. The system is equipped with advanced features including predictive analytics, data collection, and custom report generation, all while ensuring the highest standards of data security and privacy.

### **2.2 PROGRAM Participation.**

(a) Program will participate in the FSPHP Research Information System, including contributing its physician data at the beginning of this relationship and sending updates on a monthly frequency.

(b) FSPHP and Program represent and warrant that:

- (i) Neither Program's collection, nor Program's or FSPHP's use or disclosure, of the physician Data as contemplated by this Agreement, has violated or will violate any applicable laws, rules, regulations, self-regulatory guidelines or principles, the rights of any third party, or any applicable privacy policy;
  - (ii) Program Data will not include, and Program will not provide nor send to FSPHP, any protected health information (as defined by 45 CFR § 164.514) nor any sensitive personal information, including but not limited to the following: government identifiers (such as Name, Social Security numbers or tax ID numbers), driver's license numbers, account numbers, credit or debit card numbers, personal identification numbers, passwords or PINs, biometric data, answers to security questions, or other personal identifiers, nonpublic personal information, protected health information, and/or any substantially similar information;
  - (iii) using commercially reasonable efforts, Program will ensure that the Program Data does not include information about individuals under the age of 18; and
- (c) Program grants to FSPHP a non-exclusive, royalty-free license to use submitted Program Data for the purpose of aggregation of PHP participant outcome information.

2.3 Program will deliver to FSPHP a compilation of records, each consisting, at a minimum, the data elements described in Exhibit A. **PROGRAM will ensure that all data submitted is properly de-identified as described herein.**

### **3. Reports:**

FSPHP-RIS may, in its sole discretion, create and deliver an annual report to PHP PROGRAM that contains PHP PROGRAM Data and/or FSPHP-RIS Data. FSPHP may deliver other reports and data analytics upon PHP PROGRAM request and, at its discretion, may charge a fee for such Services. PROGRAM must not use any Report for marketing purposes without the express prior written permission of FSPHP. PROGRAM is further prohibited from selling or otherwise accepting payment from any third party in exchange for any Report.

#### 4. Subcontractors:

FSPHP RIS may subcontract its obligations under this Agreement.

#### 5. Data Requirements:

- Data Submission

FSPHP-RIS reserves the right to establish minimum Data submission requirements and PROGRAM expressly agrees to comply with such minimum requirements absent express written permission from FSPHP-RIS to deviate therefrom. PROGRAM represents, warrants and covenants that it will only provide and/or otherwise give FSPHP access to De-Identified Data. PROGRAM further agrees to comply with all FSPHP specification requirements necessary to support Data transmission. In the event that Program has insufficient data to meet minimum Data submission requirements and notifies FSPHP-RIS of same, failure to satisfy such requirements shall not constitute a breach of this Agreement.

#### 6. Confidentiality.

In connection with this Agreement, either Party may disclose to the other Party information which is commercially sensitive, confidential, and/or proprietary to and/or a trade secret of Disclosing Party (“**Confidential Information**”). The Party in receipt of such information will not intentionally disclose Confidential Information except to its employees, contractors, and agents as required to exercise its rights or perform its obligations hereunder, and will exercise the same degree of care in safeguarding and protecting the confidentiality of the Confidential Information that the receiving Party exercises with respect to its own confidential information, but in no event less than a reasonable degree of care. The terms and conditions of this Agreement are considered Confidential Information of both Parties. The termination of this Agreement will not relieve either Party of its obligations with respect to Confidential Information disclosed pursuant to the terms hereof. Confidential Information will not include information which: (a) is or becomes part of the public domain through a source other than the receiving Party; (b) was rightfully known to the receiving Party as of the time of its disclosure; (c) is independently developed by the receiving Party; (d) is subsequently learned from a third party not under a confidentiality obligation to the disclosing Party; (e) is authorized for disclosure by the disclosing Party; or (f) is and only to the extent required to be, disclosed pursuant to a duly authorized subpoena, court order, or government authority, whereupon Receiving Party subject to same will provide prompt

written notice to Disclosing Party, prior to such disclosure, so that Disclosing Party may seek a protective order or other appropriate remedy. For clarity, Program Data does not constitute Program's Confidential Information and may be shared with other FSPHP Cooperative participants.

**7. Proprietary Rights.**

All code, software programs, processes, methodologies, algorithms, and related know-how and residual knowledge developed, created, or used by FSPHP or its agents in connection with the performance of Services hereunder, any documentation relating thereto, and any modifications, enhancements, new versions, or derivative works thereof, and all trade secrets, copyrights, patents, and other intellectual and proprietary rights therein, are FSPHP's Confidential Information and are owned by and remain the property of FSPHP. Further, all data that FSPHP provides for use hereunder and all information derived from the use of any of the foregoing (collectively, "FSPHP Data"), is FSPHP's Confidential Information and will remain the property of FSPHP. Program acknowledges that, to the extent that information and/or reports are provided to Program by FSPHP-RIS, Program will obtain no rights to the FSPHP Data. Nothing in this Agreement shall be construed as operating to transfer proprietary rights to any original PROGRAM data (*i.e.*, original data which has not been de-identified and submitted to FSPHP-RIS).

**8. Limitation of Liability; Disclaimer.**

**8.1 Neither FSPHP nor Program will be liable for any indirect, incidental, special, exemplary, punitive, or consequential damages of any type, including without limitation lost profits arising out of or in connection with this Agreement or the services described herein, even if a Party has been advised of the possibility of such damages and even if a Party asserts or establishes a failure of essential purpose of any limited remedy provided in this Agreement.**

**8.2 Except for a Party's indemnification obligations as set forth in this Agreement, the Parties agree that (a) FSPHP's total aggregate liability for any and all damages will in no event exceed the aggregate amount of fees paid to FSPHP under this Agreement during the preceding 12-month period, and (b) Program's total aggregate liability for any and all damages will in no event exceed the amount of**

**fees, non-cancellable costs, and other amounts as Program has agreed to pay FSPHP under this Agreement.**

**8.3 FSPHP makes no warranties, whether express or implied or arising out of custom or trade usage, and specifically disclaims all warranties, including but not limited to any implied warranty of merchantability or fitness for a particular purpose, with respect to its performance of services or the FSPHP data provided hereunder.**

**9. Indemnity.**

Each Party will indemnify, defend, and hold harmless the other Party and its employees, principals (shareholders or holders of an ownership interest, as the case may be), and agents from and against any losses, damages, costs, expenses (including court costs and reasonable attorneys' fees), judgments, assessments, fines, and other liabilities arising out of or resulting from any third party claims or suits resulting from such Party's breach of its respective representations and warranties set forth in this Agreement. To receive the foregoing indemnities, the Party seeking indemnification will promptly notify the other in writing of a claim or suit and provide reasonable cooperation (at the indemnifying Party's expense) and grant the indemnifying Party the sole and full authority to defend the claim or suit; provided, however, the indemnified Party may participate in the defense of such claim or suit at its expense. The indemnifying Party will have no obligation to indemnify the indemnified Party under any settlement made without the indemnifying Party's written consent (which will not be unreasonably withheld). The indemnifying Party will not settle any claim or suit under this Section on the indemnified Party's behalf without first obtaining the indemnified Party's written permission (which will not be unreasonably withheld). Each Party will promptly communicate to the other any offer received by or proposed to be made in settlement of any claim or suit that is subject to indemnification under this Section 6, and each Party will promptly and reasonably consider any such settlement offer or proposal that the other Party desires to accept or make.

**10. Term and Termination.**

The initial term of this Agreement commences on the Effective Date and will continue for a period of 36 months, unless sooner terminated as permitted herein. Upon the expiration of the initial term, this Agreement will renew automatically for additional successive 12-month periods unless and until terminated as set forth herein. Either Party

may terminate this Agreement upon at least 60 days' prior written notice to the other Party; provided, however, that FSPHP may terminate this Agreement immediately and without further obligation if FSPHP, in its reasonable discretion, determines that its performance of this Agreement: (a) could cause irreparable damage to FSPHP's reputation; (b) is deemed contrary to accepted industry practice; (c) may be in violation of applicable law, rule, regulation, or order; or (d) could result in public relations issues that are detrimental to FSPHP's business. FSPHP may suspend provision of the Services if Program fails to fulfill any of its material obligations hereunder. Upon termination of this Agreement for any reason, (i) Program will pay FSPHP the full amount of the current FSPHP invoice hereunder within 15 days after receipt, and (ii) within 30 days after such termination, each Party will delete all Confidential Information of the other Party (excluding any Program Data) and all information and other materials derived therefrom. Notwithstanding anything to the contrary, FSPHP may retain Confidential Information and Program Data as required by: (A) law, a judicial, regulatory, or law enforcement authority, a subpoena, preservation demand, or any other legal preservation obligation, as determined by FSPHP; and (B) its retention policies. All terms logically construed to survive the termination of this Agreement will survive.

#### **11. Notices.**

Any notices required or permitted pursuant to this Agreement will be in writing and deemed to have been sufficiently given or served for all purposes when presented personally or sent by overnight courier or registered mail to the signatories herein at the respective addresses as set forth in this Agreement. Notices for FSPHP should be sent to: Attn: 668 Main Street, Suite 8, #295, Wilmington, MA 01887. **Program agrees that any notice required or contemplated hereunder may be sent to the address provided on page 1 of this Agreement; Program further agrees to provide notice of any change of address to FSPHP within thirty (30) days of any such change.** Notwithstanding anything to the contrary, any notices, disclosures, or other information to be shared between the Parties will only be shared to the extent permitted by law, or any applicable judicial, regulatory, or law enforcement authority.

#### **12. Force Majeure.**

No Party will be liable to the other in connection with any failure or delay in performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault of such Party (a "**Force Majeure Event**"). Upon the

occurrence of a Force Majeure Event, the disabled Party will promptly and in writing advise the other Party if it is unable to perform due to such Force Majeure Event, the expected duration of such inability to perform, and of any developments (or changes therein) that appear likely to affect the ability of the disabled Party to perform any of its obligations in whole or in part.

**IN WITNESS WHEREOF**, and in acknowledgment that the Parties have read, understand, and agree to the terms and conditions contained herein, FSPHP and PROGRAM have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below, effective as of the Effective Date.

Program:

Program Name: \_\_\_\_\_

Signatory Name: \_\_\_\_\_

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

Program Address: \_\_\_\_\_

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

FEDERATION OF STATE PHYSICIAN HEALTH PROGRAMS:

Signatory Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

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

## Exhibit A

### PROPOSED LIST OF DATA ELEMENTS

**REMINDER: PROGRAM shall provide ONLY PROPERLY DE-IDENTIFIED DATA as set forth herein and as described by applicable provisions of state and federal regulations. PROGRAM shall communicate with FSPHP-RIS immediately if PROGRAM experiences any difficulty, confusion, or logistical issues with de-identifying data to be submitted.**

**A non-exhaustive list of information required to be de-identified under this Agreement includes: name, date of birth, address, electronic mail address, zip code, telephone or facsimile numbers, medical record numbers, health plan numbers, images.** PROGRAM may assign a code or other means of record identification to allow the De-Identified information to be re-identified by PROGRAM if the requirements of 45 C.F.R. § 164.514(c) are met.

Once properly de-identified, PROGRAM may submit data corresponding to the following elements to FSPHP-RIS as described herein:

- a. State (Province)
- b. Survey episode linkage number (PROGRAM must randomly assign a number for FSPHP RIS that does not contain, and is not derived from, PHI that links surveys associated with an episode of care; no dates are permitted)
- c. Year of Referral
- d. Year of Birth
- e. Age at Referral
- f. Gender
- g. Healthcare Professional Type
- h. Employment Status
- i. Specialty
- j. Reason for Referral
- k. Medical condition
- l. Mental health condition(s) other past or current medical conditions
- m. Medications
- n. History of mental health issues
- o. Substance use concerns such as alcohol, prescription medications, and/or illicit drugs

- p. Referral source
- q. PHP recommendations
  - i. Assessment
  - ii. Standardized Psychological
  - iii. Treatment
  - iv. Monitoring (Y/N)
  - v. Type of Monitoring
  - vi. Anticipated Length of Monitoring
  - vii. Therapy type
  - viii. Peer Support Groups offered
  - ix. Other Support Services provided
- r. Response to Recommendations (TBD)
- s. Monitoring and drug testing
  - i. Frequency of drug testing
  - ii. Date of test
  - iii. Test results
  - iv. PHP case management
  - v. Therapy
  - vi. Workplace monitor Y/N
- t. Outcome measures:
  - i. Compliance
  - ii. Relapse
  - iii. Status at PHP
  - iv. Currently practicing Y/N