

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Agreement (this "Agreement") is made and entered into as of this **xx day of month, year** by and between **<<PHYSICIAN OR PRACTICE LEGAL NAME>>** ("Covered Entity"), and Paragon Private Health, LLC, ("Business Associate").

WHEREAS, Business Associate acknowledges that Covered Entity has in its possession data that contains individual identifiable health information as defined by Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder; and

WHEREAS, Business Associate and Covered Entity are parties to a demographic analysis of the Covered Entity's patient panel, to be performed by Business Associate, pursuant to which the fulfillment of the Parties' obligations thereunder necessitates the exchange of, or access to, data including individual identifiable health information,

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

I. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

- A. *Business Associate*. "Business Associate" shall mean Paragon Private Health, LLC.
- B. *Covered Entity*. "Covered Entity" shall mean **<<PHYSICIAN OR PRACTICE LEGAL NAME>>**.
- C. *Individual*. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- D. *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- E. *Protected Health Information*. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- F. *Required By Law*. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- G. *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

II. Obligations and Activities of Business Associate

- A. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law.
- B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- D. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
- E. Business Associate agrees to ensure that any agent (including a subcontractor to whom it provides PHI received from, or created or received by, Business Associate on behalf of Covered Entity) also agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- F. Business Associate agrees to provide access, at the request of Covered Entity, and in a time and manner reasonably requested by Covered Entity, to PHI about an individual contained in a Designated Record Set. Access will be provided to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- G. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to, pursuant to 45 CFR § 164.526, at the request of Covered Entity or an Individual, and in a time and manner reasonably requested by Covered Entity.
- H. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- I. Business Associate agrees to document such disclosures of PHI and other information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
- J. Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section II (I) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- K. Business Associate agrees to hold Covered Entity harmless from any claim, loss or damage of any kind, whether direct or indirect, arising out of or related to Business Associate's use or unauthorized disclosure of PHI.

III. Permitted Uses and Disclosures by Business Associate

- A. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI only to carry out the legal responsibilities of the Business Associate under the Service Agreement.
- B. Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- C. Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided:
 - 1. The disclosure is Required By Law; or
 - 2. The Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- D. Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- E. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with § 164.502(j)(1).

IV. Obligations of Covered Entity

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions (provisions dependent on business arrangement) are as follows:

- A. Covered Entity shall notify Business Associate 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 Business Associate's use or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. Covered Entity shall notify Business Associate 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 Business Associate's use or disclosure of PHI.

V. **Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity

VI. **Term and Termination**

A. The Term of this Agreement shall be effective as of the date of this Agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or,
3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

C. Effect of Termination

1. Upon termination of this Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. Miscellaneous

- A. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- B. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, P. L. No. 104-191.
- C. **Survival.** The respective rights and obligations of Business Associate under Section VI (C) of this Agreement shall survive the termination of this Agreement.
- D. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- E. **Indemnification.** Each Party agrees to indemnify and hold harmless the other for any damages, costs, expenses or liabilities, including legal fees and costs, arising out of or related to a breach of such Party's obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement, pages 1 – 5, as of the date first stated above.

Business Associate:

Paragon Private Health, LLC

By:

A handwritten signature in blue ink, appearing to read "Michael J. [unclear]", is written over the signature line.

Vice President

October 31, 2016