

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “BAA”) is by and between PaySpan, Inc. (“Business Associate”) and the healthcare provider (“Provider”) who accepts this BAA, and is effective as of the date of such acceptance (by “click through” or otherwise) (the “Effective Date”).

WHEREAS, Provider and Business Associate are parties to one or more agreements (each, an “Agreement”), pursuant to which Business Associate may access, receive, use or disclose Protected Health Information (“PHI”) from, for or on behalf of Provider and as such may be deemed a Business Associate under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the rules and regulations promulgated thereunder (as amended from time-to-time including, without limitation, the amendments enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 and titled as the Health Information Technology for Economic and Clinical Health Act, “HITECH”) (collectively “HIPAA”); and

WHEREAS, in the event that Business Associate has access to PHI such that its services would render it a business associate under HIPAA, then this BAA is intended by the parties to comply with the requirements of HIPAA applicable with respect to a business associate.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Provider and Business Associate agree to the foregoing and as follows:

I. Definitions

Capitalized terms used and not defined in this BAA shall have the meaning as set forth under HIPAA.

II. Obligations and Activities of Business Associate

A. Business Associate will not use or disclose PHI other than as follows:

- (1) as permitted or required under the Agreement or this BAA;
- (2) as Required by Law;
- (3) for the proper management and administration of Business Associate;
- (4) to carry out the legal responsibilities of Business Associate;
- (5) to provide data aggregation services relating to the Health Care Operations of Provider; and
- (6) to report violations of law to appropriate Federal and State authorities.

Notwithstanding the foregoing, Business Associate may disclose PHI for its proper management and administration only if (i) such disclosure is Required by Law or (ii) Business Associate obtains, in writing, prior to making any disclosure to a third party, (a) reasonable assurances from such third party that the PHI will be held confidential as provided under this BAA and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to such third party; and (b) an agreement from such third party to promptly notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may use PHI to create De-Identified health information to the extent permitted by the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164 (the “Privacy Rule”).

B. Business Associate will use appropriate safeguards and comply, where applicable, with the Security Standards for the Protection of Electronic Protected Health Information as set forth in 45 C.F.R. Parts 160 and 162 (the “Security Standards”) with respect to electronic PHI; and prevent use or disclosure of PHI other than as provided for by the Agreement or this BAA.

C. Business Associate will ensure that any subcontractor of Business Associate that creates, receives, maintains or transmits electronic PHI on behalf of Business Associate agrees to (i) comply with the applicable requirements of the Security Standards by entering into a contract or arrangement that complies with 45 C.F.R. 164.314 and (ii) the same or substantially similar restrictions and conditions that apply through this BAA to Business Associate with respect to such information.

D. Business Associate shall promptly report to Provider of: (i) any use or disclosure of PHI not provided for by this BAA of which Business Associate has actual knowledge, and (ii) any Security Incident of which it has actual knowledge. Notwithstanding the foregoing, the parties acknowledge and agree that this section constitutes notice by Business Associate to Provider of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Provider shall be required. “Unsuccessful Security Incidents” shall mean Security Incidents in the nature of 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 no such incident results in unauthorized access, use or disclosure of PHI.

E. Business Associate shall report to Provider any Breach of Unsecured PHI without unreasonable delay and in compliance with applicable law but in no case later than sixty (60) calendar days after discovery of the Breach (except where a law enforcement official determines that such reporting would impede an investigation or cause damage to national security). The reporting required under this Section shall include, to the extent possible, (i) information that identifies the individual(s) whose Unsecured PHI has been or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach; (ii) a brief description of what happened; (iii) a description of the Unsecured PHI involved in the Breach; (iv) steps that the individual(s) could take to protect him/herself from potential harm; and (v) a brief description of steps taken by Business Associate to investigate, mitigate or protect against the Breach.

F. To the extent applicable, Business Associate shall provide PHI contained in a Designated Record Set held by Business Associate (that is not duplicative of PHI in possession of Provider) to Provider in order for Provider to meet the requirements under 45 CFR §164.524 or 45 CFR §164.526, as applicable. If any Individual requests access to his or her PHI directly from Business Associate, Business Associate shall forward such request to Provider so that Provider can comply with the request. Any disclosure of, or decision not to disclose, the PHI requested by an individual or a personal representative and compliance with the requirements applicable to an individual’s right to obtain access to PHI shall be the sole responsibility of Provider.

G. Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Provider to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide to Provider, within a timeframe mutually agreed to by Provider and Business Associate, information collected in accordance with this Section, to permit Provider to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. If any Individual requests access to the foregoing information directly from Business Associate, Business Associate shall forward such request to Provider so that Provider can comply with the request.

H. Business Associate agrees to make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by

Business Associate on behalf of Provider available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Provider's compliance with the Privacy Rule.

I. To the extent Business Associate is to carry out Provider's obligation under the Privacy Rule, Business Associate agrees to comply with the Privacy Rule requirements that apply to Provider in the performance of such obligation.

III. Obligations of Provider

A. Provider shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Provider.

B. Provider shall: (i) notify Business Associate in writing of any limitations in Provider's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent such limitations may affect Business Associate's use or disclosure of PHI, (ii) notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent such changes may affect Business Associate's use or disclosure of PHI, upon Provider becoming aware of such changes, and (iii) immediately notify Business Associate in writing of any restriction to the use or disclosure of PHI agreed to by Provider in accordance with 45 CFR § 164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI. None of the foregoing limitations, changes /revocations/permissions or restrictions shall be applicable to Business Associate until Business Associate has had a reasonable period of time following actual notice to implement the same.

IV. Term and Termination.

A. The term of this BAA shall commence on the Effective Date and shall continue in full force and effect until it expires or is terminated as set forth herein.

B. This BAA may be terminated by a party if the other party materially breaches this BAA and fails to cure such breach within thirty (30) days after receipt of such notice. This BAA will automatically terminate with respect to the Agreement upon the expiration or termination of such Agreement. If, in its reasonable discretion following consultation with the other party, either Party determines that neither termination of this BAA nor a cure is feasible, the non-breaching party may report the breach to the Secretary.

C. Upon termination of this BAA for any reason, Business Associate will return or destroy PHI. Business Associate shall not retain any copies of the PHI. However, to the extent that Business Associate determines that it is infeasible for Business Associate to return or destroy PHI, Business Associate shall notify Provider in writing of the conditions that make return or destruction infeasible. For any PHI for which return or destruction is infeasible, Business Associate will continue to extend the protections of this BAA 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. If Business Associate elects to destroy all PHI, it shall, if requested in writing by Provider, certify in writing to Provider that such PHI has been destroyed. The terms of this Section shall survive the expiration or termination of this BAA.

V. **Liability.** Each party's respective liability to the other party under this BAA shall be subject to any limits of liability as set forth in the applicable Agreement, and in no event shall either party be liable to the other party under this BAA for any indirect, special, consequential, exemplary punitive or like damages, even if such party is advised of the possibility of such damages, and regardless of the form of action. The terms of this Section shall survive the termination or expiration of this BAA.

VI. Applicability. References to the Agreement shall include any amendments, and any other contract between Provider and Business Associate.

VII. Amendment to Comply with Law. The parties agree to take such action as is necessary to comply with and implement the standards and requirements of HIPAA (including, without limitation, the prompt amendment of this BAA).

VIII. Governing Law. The interpretation and enforcement of this BAA will be governed by the laws of the State of Delaware.

IX. Independent Contractor. The parties agree that for all purposes hereunder and under the Agreement, Business Associate' status shall be that of an independent contractor and not an agent.

X. Interpretation. If a term in the Agreement conflicts or is otherwise inconsistent with a term in this BAA, the provisions of this BAA will prevail with respect to the subject matter hereof. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA.

XI. Severability and Compliance. If a provision of this BAA is held invalid under any applicable law, such invalidity will not affect any other provision of this BAA that can be given effect without the invalid provision. Further, all terms and conditions of this BAA will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

XII. Miscellaneous. This BAA supersedes all previous understandings and agreements between the parties, whether oral or written, with respect to the matters set forth herein. No amendment to this BAA or any waiver of any right or power hereunder will be valid unless in writing and signed by each of the parties. This BAA will not be assigned by either party without the prior written consent of the other party. No third party will be deemed to be an intended or unintended third party beneficiary of this BAA and nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person or entity other than Provider or Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.