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Spark

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between Spark Health Inc. ("Spark") and _____ ("Agent") (Spark and Agent, each a "Party" and, collectively, the "Parties") to be effective on the date of the last signature hereto (the "Effective Date").

WHEREAS, Spark performs functions or activities on behalf of, or provides certain services to, Agent pursuant to the Agreement (the "Services") that may involve access to, or creation, receipt, maintenance, use, or disclosure of Protected Health Information;

WHEREAS, to the extent Agent is acting as a Business Associate to access, create, receive, maintain, use, or disclose Protected Health Information on behalf of a Covered Entity and to the extent Spark, as a result, is deemed to be acting as a Business Associate of Agent, the Parties are required to comply with the Health Information Technology Economic and Clinical Health ("HITECH") Act, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations issued thereunder (collectively referred to herein as the "HIPAA Rules"), including, but not limited to, the Privacy, Security, Breach Notification and Enforcement Rules (45 C.F.R. Parts 160, 162 and 164), as may be amended from time to time;

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which any Protected Health Information, including electronic Protected Health Information, will be handled by the Parties and third parties during the term of the Agreement and after its termination; and

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, Spark and Agent hereby agree as follows:

1. Definitions

(a) General Definitions. All capitalized terms used but not otherwise defined in this Agreement shall have the meaning set forth in HITECH and regulations issued thereunder, HIPAA and regulations issued thereunder, state privacy law protecting the confidentiality of information, and state breach notification laws. Without limiting the generality of the foregoing, the following terms, to the extent used in this Agreement, shall have the same meaning as those terms in the HIPAA Rules: Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Use and Workforce. The term "Breach" as used herein shall mean (i) breach as defined in the HIPAA Rules and (ii) unlawful or unauthorized access to, or use or disclosure of, patient's medical information pursuant to state law.

(b) References. References in this Agreement to statutory or regulatory provisions, including provisions defining terms used in this Agreement, shall refer to such statutory or regulatory provisions as in effect on the date hereof and as subsequently amended, revised or modified during the term of this Agreement.

2. Permitted Uses and Disclosures of Protected Health Information

(a) Services. Except as otherwise specified herein, Spark may use Protected Health Information as may be reasonably necessary to perform the Services or other obligations under the Agreement, or as expressly permitted by this Agreement.

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(b) Business Activities of Spark. Spark may use and disclose Protected Health Information if necessary for the proper management and administration of Spark or to meet its legal responsibilities; provided that Spark may disclose Protected Health Information to third parties for such purposes only if the disclosures are Required by Law, or Spark obtains reasonable assurances from the person to whom the information is disclosed that: (i) the information will remain confidential; (ii) the information will be used or further disclosed only as Required by Law or for the purposes for which the information was disclosed to the person; and (iii) the person will notify Spark of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Additional Activities of Spark. Spark may use Protected Health Information to create de-identified information for Data Aggregation purposes for the Health Care Operations of Agent in a manner consistent with the standards stated in HIPAA. Spark may not de-identify Protected Health Information received from or created on behalf of Agent unless such de-identification is expressly permitted by both the Agreement (in which event de-identification is permitted only for the purpose(s) set forth in such Agreement) and Agent's Business Associate Agreement with the Covered Entity .

3. Agent's Obligations and Responsibilities

(a) Use and Disclosure of PHI by Agent. Agent shall use and disclose Protected Health Information only as permitted by HIPAA. Agent shall not authorize, request, or require Spark to use or disclose Protected Health Information in any manner that would violate HIPAA if the use or disclosure were carried out by Agent except as permitted under HIPAA and set forth in this Agreement. Agent will take appropriate measures to limit its use of Protected Health Information to the minimum necessary for Spark to carry out its authorized use of such Protected Health Information.

(b) Authorizations and Restrictions. Agent warrants that it has obtained and will obtain any consents, authorizations, and/or other legal permissions required under HIPAA and/or other applicable law for the disclosure of Protected Health Information to Spark. Agent will notify Spark of any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information to the extent that such changes may affect Spark's use or disclosure of Protected Health Information. Agent will not agree to any restriction on the use or disclosure of Protected Health Information under 45 CFR § 164.522 that restricts Spark's use or disclosure of Protected Health Information under the Agreement unless such restriction is required by law. Agent will not agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause Spark or one of its Subcontractors (as defined below) to violate this Agreement or any applicable law.

(c) Safeguards. Agent agrees to use appropriate safeguards designed to prevent against unauthorized use or disclosure of Protected Health Information and as otherwise required under HIPAA with respect to the Services. Without limitation, this includes administrative, technical and physical safeguards that are appropriate to the size and complexity of Spark's operations and the nature and scope of its activities involving Protected Health Information.

4. Spark's Obligations and Responsibilities

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(a) Use and Disclosure of PHI. Spark hereby agrees to use and/or disclose the Protected Health Information only as permitted or required by the Agreement or this Agreement or as otherwise Required by Law.

(b) Breach Notification. Spark will promptly notify Agent following Spark's discovery of a any Breach or Security Incident in accordance with HIPAA and expediently under the circumstances, consistent with the legitimate needs of applicable law enforcement and applicable laws, and after taking any measures Spark deems necessary to determine the scope of the Breach or Security Incident. For purposes hereof, "discovery" shall have the meaning ascribed to it in 45 CFR § 164.410(a)(2).

(c) Mitigation. Spark hereby agrees to mitigate, to the greatest extent practicable, any harmful effects from any Breach or any Security Incident of which Spark becomes aware.

(d) Safeguards. Spark agrees to use appropriate safeguards designed to prevent against unauthorized use or disclosure of Protected Health Information and as otherwise required under HIPAA with respect to the Services. Without limitation, this includes administrative, technical and physical safeguards that are appropriate to the size and complexity of Spark's operations and the nature and scope of its activities involving Protected Health Information.

(e) Subcontractors. Spark hereby agrees to require any person(s) to whom Spark delegates a function, activity or service under the Agreement (other than members of Spark's Workforce) or who create, receive, maintain or transmit Protected Health Information on behalf of or for Spark ("Subcontractors") and agents that receive or use, or have access to, Protected Health Information to enter into a written agreement that: (i) complies with HITECH and HIPAA, (ii) includes substantially similar restrictions, conditions, obligations and requirements concerning Protected Health Information that apply to Spark pursuant to this Agreement; and (iii) provides that all assignees or subcontractors of Spark's Subcontractor will enter into written agreements satisfying the requirements of clauses (i) through (iii) above.

(f) Access to PHI. In the event that the Protected Health Information received by Spark pursuant to the Agreement constitutes a Designated Record Set, Spark hereby agrees to, at the request of Agent, provide access to the Protected Health Information to Agent for inspection or copying, to enable Agent to fulfill its obligations under 45 C.F.R. § 164.524. In the event that an individual requests access to Protected Health Information directly from Spark or its agents or Subcontractors, Spark must notify Agent in writing within five (5) days of the request; and Agent will be responsible for delivering to the individual the information he or she has requested.

(g) Amendments to PHI. In the event that the Protected Health Information received by Spark pursuant to the Agreement constitutes a Designated Record Set, Spark hereby agrees to, at the request of Agent, make any amendment(s) to the Protected Health Information that Agent directs pursuant to 45 C.F.R. § 164.526. In the event that any individual requests an amendment of Protected Health Information directly from Spark or its agents or Subcontractors, Spark must notify Agent in writing within five (5) days of such request; and Agent will then direct Spark to amend its Protected Health Information, as may be appropriate based on the individual's request.

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(h) Accounting of Disclosures of PHI. Spark hereby agrees to (i) maintain and make available the information required to enable Agent to respond to an individual's request for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528; and (ii) within fifteen (15) days of receiving a written request from Agent, provide to Agent such information as is requested by Agent to permit Agent to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.528. In the event that an individual requests an accounting of disclosures directly from Spark or its agents or Subcontractors, Spark must notify Agent in writing within five (5) days of the request; and Agent shall be responsible for preparing and delivering to the individual any such accounting requested.

(i) Availability of Records for Review by HHS and Spark. Spark hereby agrees to make available internal records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the U.S. Department of Health and Human Services (or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority) for purposes of determining Agent's compliance with 45 C.F.R. part 164, subpart E, subject to attorney-client and other applicable legal privileges.

5. Term and Termination.

(a) Term. This Agreement shall become effective on the Effective Date and shall continue in effect until termination or expiration of the Agreement, subject to the provisions of Section 7(a), unless terminated earlier as provided in this section.

(b) Termination for Breach. In the event either Party becomes aware that the other Party has engaged in a pattern of activity or practice that constitutes a material breach or violation of this Agreement, the non-breaching Party may request in writing that the breaching Party cure the breach of violation. If the breach of violation is not cured within thirty (30) days of the written notice, the non-breaching Party may terminate this Agreement and the Agreement.

(c) Effect of Termination. Upon termination or expiration of the Agreement and this Agreement pursuant to this Section 5, Spark shall return to Agent, or if agreed to by Agent, destroy all Protected Health Information received from Agent, or created, maintained, or received by Spark on behalf of Agent, that Spark and its agents and Subcontractors still maintain in any form. If such return or destruction is not feasible, then Spark will so notify Agent in writing, and shall extend any and all protections, obligations, limitations and restrictions contained in this Agreement to Protected Health Information retained by Spark, its agents and its Subcontractors after the termination of the Agreement and this Agreement.

6. Indemnification. Each Party (the "Indemnifying Party") agrees to indemnify and hold harmless the other Party, its employees, directors, officers, Subcontractors, agents or other members of its Workforce (the "Indemnitees") against all actual and direct losses, liabilities, damages, claims, costs or expenses (including the Indemnitees' reasonable attorney's fees in defending itself against third party claims) they may suffer as the result of third party claims, demands, actions, investigations, settlements or judgments against them arising from or in connection with any

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material breach of this Agreement by the Indemnifying Party or its employees, directors, officers, Subcontractors, agents or other members of its Workforce. The Indemnifying Party's obligation to indemnify the Indemnitees shall survive the expiration or termination of this Agreement for any reason. To the extent that the Agreement contains a provision that limits either Party's liability under the Agreement, each Party's indemnification obligations under this Section will be excluded from such limitation of liability.

7. Miscellaneous.

(a) Survival. All terms which by their nature are intended to survive the termination or expiration of this Agreement will survive such termination or expiration.

(b) Amendment. The Parties shall take such action as is necessary to amend the Agreement and this Agreement from time to time as is necessary for the Parties to comply with changes to the rules and regulations under HIPAA. If the Parties cannot agree as to a necessary amendment, either Party may terminate the Agreement and this Agreement with thirty (30) days prior written notice to the other Party.

(c) Entire Agreement; Amendments; Waiver. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes any previous agreements between the Parties relating to the same subject matter. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

(d) No Third Party Beneficiaries. 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 respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

(e) Notice. Any notices or communication required or permitted to be given under this Agreement to a Party shall be served personally, sent by United States certified mail, sent by overnight delivery or sent by email to the following address:

If to Agent:
Attn:
Address:

Email:

If to Spark:
Spark Health Inc.
Attn: Privacy Officer
Address:
2218 Broadway #232
New York , NY 10024

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Spark

Email: james@sparkadvisors.com

Any change to the notice address listed above by a Party must be given to the other Party in the same manner as described in this Section. The date of notice shall be the date of delivery if the notice is personally delivered or sent by overnight delivery or courier service, three (3) business days following the date of mailing if the notice is sent by United States certified mail or the date of transmission if the notice is sent by email. Each Party agrees to maintain evidence of the respective notice method utilized.

(f) Counterparts; Facsimiles. This Agreement may be executed electronically and in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Any such counterpart containing an electronic or facsimile signature shall be deemed an original.

(g) Interpretation; Inconsistencies between Agreement and Agreement; Section Headings. The provisions of this Agreement shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Agreement. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the Privacy Regulation and Security Regulation. The section headings used in this Agreement are for reference and convenience only and have no legal or contractual effect.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without application of principles of conflicts of laws. The Parties hereto agree that any dispute arising under this contract shall be resolved in the State or Federal Courts in New York, New York, and the Parties hereby submit themselves to the personal jurisdiction of said courts.

IN WITNESS WHEREOF, Spark and Agent have executed this Agreement as of the Effective Date.

SPARK HEALTH INC.	AGENT:
James Jiang	
Printed Name:	Printed Name:
Title: CEO	Title: Independent Agent
Date: 3/6/2022	Date:
	NPN: