



PLATFORM TERMS OF SERVICE

THE SERVICES (DEFINED BELOW) ARE PROVIDED SUBJECT TO THESE TERMS OF SERVICE ("TERMS"). PLEASE READ THE FOLLOWING INFORMATION CAREFULLY. YOUR ACCEPTANCE OF THESE TERMS AND/OR USE OF THE SERVICES SIGNIFIES YOUR AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH BELOW. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT ACCESS OR ACCEPT THE SERVICES.

ARBITRATION NOTICE: THESE TERMS CONTAIN A BINDING ARBITRATION PROVISION, AND A WAIVER OF CLASS ACTIONS – PLEASE READ THOSE SECTIONS CAREFULLY.

1. Services and Applicable Terms. Spark Health Inc., a Delaware corporation, and its subsidiaries and/or affiliates (collectively, "Spark") will provide you (you and Spark, collectively, the "Parties") with access to Spark's technology platforms and applications and related services (collectively, the "Services") subject to these Terms, the Business Associate Addendum between you and Spark (the "BAA"), and Spark's Privacy Policy available at <https://www.sparkadvisors.com/privacy-policy>. Spark may, from time to time, provide you with additional terms applicable to your use of specific parts of the Services or post such additional terms on the Services to which they apply. Such additional terms are incorporated by reference into these Terms. If there is any conflict between these Terms and any additional terms that apply to a particular Service, the additional terms will control.
2. Compliance with Laws. You are solely responsible for ensuring that your use of the Services complies with all applicable federal, state, and local laws, rules, and regulations, including but not limited to 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, such as the Privacy, Security, Breach Notification and Enforcement Rules (45 C.F.R. Parts 160, 162 and 164), state privacy law protecting the confidentiality of information, and state breach notification laws, as may be amended from time to time (collectively, "Laws").
3. Restrictions. Except as otherwise expressly permitted in these Terms, you will not: (a) reproduce, modify, adapt or create derivative works of the Services; (b) rent, lease, distribute, sell, sublicense, transfer or provide access to the Services to a third party; (c) use the Services for the financial benefit of any third party; (d) interfere with or otherwise circumvent mechanisms in the Services intended to limit your use; (e) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats, or non-public APIs to any of the Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to us); (f) remove or obscure any proprietary or other notices contained in any of the Services; (g) use the Services for competitive analysis, benchmarking, or to build competitive products; (h) publicly disseminate information regarding the performance of the Services; (i) use the Services to be used for any illegal or misleading purpose, or any manner inconsistent with these Terms; or (j) encourage, assist or permit any third party to do any of the foregoing.
4. Spark Intellectual Property. As between the Parties, Spark owns all right, title, and interest in and to the Services, any related technology owned, in-licensed, created, developed, incorporated, or generated, in whole or in part, by or on behalf of Spark for or in connection with the Services, and all intellectual property rights therein, and all results and outputs thereof (the "Spark IP"). Spark hereby grants you a royalty-free, non-transferable, non-sublicensable license to use the Spark IP, including any reports, data, specifications, or computer outputs, solely for the purpose of receiving the Services for your business purposes during the Term. To the extent you submit feedback, comments, ideas, or suggestions to Spark regarding the Services or new products and services from time to time (the "Feedback"), Spark may, in its discretion and for any purpose: (i) use, modify, and incorporate the Feedback into Spark's products and services; and (b) license or sublicense the Feedback, without obligation to you.
5. Spark Trademarks. Spark's name, logo, and all related names, logos, product and service names, designs, and slogans are trademarks of Spark or its affiliates or licensors. You agree not use such marks without the prior written permission of Spark. All other names, logos, product and service names, designs, and slogans displayed on or through the Services are the trademarks of their respective owners. You agree not to delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from the Services.



6. Your Content.

a. Ownership. As between the Parties, you own all right, title, and interest in and to any information, data, and/or materials you provide to Spark or upload onto the Services, including without limitation, any personal information or personal health information or your NPN (“Your Content”). You hereby grant Spark a perpetual, royalty-free, non-transferable, non-sublicensable, worldwide license to use and disclose Your Content: (i) to provide, operate, and manage the Services for you, including to service or execute any support request made by you or your authorized representatives; (ii) to comply with legal or regulatory obligations applicable to the Services; and (iii) in de-identified or aggregated form, to improve Spark’s services and offerings and other business purposes. You further agree to Spark’s collection and processing of any personal information contained in Your Content as provided in Spark’s Privacy Policy (available at <https://www.sparkadvisors.com/privacy-policy>).

b. Representations, Warranties, and Covenants. You represent, warrant, and covenant that: (i) you have obtained all necessary rights, releases and permissions to submit Your Content to Spark and to grant the rights granted to Spark in these Terms, (ii) Your Content and its submission and use as you authorize in these Terms will not violate: (1) any Laws; (2) any third-party intellectual property, privacy, publicity, or other rights; or (3) any other policies or terms (including your own or any third party’s) governing Your Content; and (iii) you will limit submission of personal information or personal health information to only that information necessary to receive the Services. Spark assumes no liability for Your Content, and you are solely responsible for Your Content and the consequences of submitting and/or using it with the Services.

c. Changes in Consent; Removals. You agree to notify Spark of any changes in, or revocation of, the permission by an individual to use or disclose his or her personal information to the extent that such changes may affect Spark’s use or disclosure of personal information.

d. Return or Deletion. Upon your written request made within thirty (30) days of termination of these Terms, Spark will return (via export) Your Content. Absent such a written request, Spark may delete Your Content thirty (30) days after termination of these Terms. In the event of either return or deletion, Spark may retain one (1) copy of Your Content to the extent required for legal or compliance reasons or to the extent archived on back-up systems.

7. Security. You agree to implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Your Content and Spark’s Confidential Information (defined below) and comply with all Laws. You agree not to share your login credentials for the Services or let anyone else access the Services on your behalf or do anything else that might jeopardize the security of the Services. You agree to immediately notify Spark of any unauthorized access to the Services, Your Content, or Spark’s Confidential Information.

8. Insurance Products. You acknowledge that Spark does not underwrite any insurance policy, plan, or package that you may view or receive on or through the Services, and any quotes or ranges displayed on or through the Services are non-binding. The final premium for any policy is determined by the underwriting insurance company following application. Medicare products and their availability may vary by state and your individual circumstances, and additional minimum coverage limits may be required in your state. The third-party insurance products made available to you by a broker are only available in the jurisdictions in which such broker is properly licensed. Your use of certain services provided by Spark may require you to enter into separate agreements with brokers or other third parties you may encounter through the Services. Any third-party Medicare products purchased by you are subject to the terms and conditions of the applicable Medicare package that you select. Spark is not responsible for the provision of any such Medicare products or services or for the provision of services by third parties, including brokers who we may recommend to you as a resource.

9. No Reliance on Information Provided. Spark does not warrant the accuracy, completeness, or usefulness of information provided on or through the Services. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other user of the Services, or by anyone who may be informed of any of its contents. The Services may include content provided by



third parties, including materials provided by other insurance agents, providers, or carriers. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by Spark, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of Spark. We are not responsible, or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.

10. DISCLAIMER OF WARRANTIES. YOU ACKNOWLEDGE THAT THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SPARK EXPLICITLY: (i) DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE; (ii) DOES NOT GUARANTEE THAT THE SERVICES OR INFORMATION IT PROVIDES ARE ACCURATE, COMPLETE, OR ERROR-FREE; (iii) DOES NOT GUARANTEE ANY RESULTS TO BE ACHIEVED FROM THE SERVICES, INCLUDING ANY SPECIFIC CUSTOMER ACQUISITION, CONVERSION, OR ATTRITION RATES OR FINAL PREMIUM RATES; AND (iv) MAKES NO WARRANTIES ABOUT THE QUANTITY, SUFFICIENCY, CREDITWORTHINESS, OR QUALITY OF ANY INFORMATION THAT IT PROVIDES. YOU UNDERSTAND AND ACCEPT THAT ALL RISKS OF CONDITION, USE, QUALITY, DESIGN, OR FITNESS ARE YOURS ALONE.

11. Third-Party Links. The Services may contain links to third-party websites and services, applications and/or display advertisements for third parties (collectively, “Third-Party Links”). Such Third-Party Links are not under the control of Spark, and Spark is not responsible for any Third-Party Links. Spark provides access to these Third-Party Links only as a convenience to you, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links. You use all Third-Party Links at your own risk and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links, the applicable third party’s terms and policies apply, including the third party’s privacy and data gathering practices. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction in connection with such Third-Party Links.

12. Term and Termination. Your access to the Services will begin on the date you sign these Terms and will continue until terminated by either Party as provided herein (the “Term”). Spark reserves the right, in its sole discretion, to suspend or terminate provision of the Services if you violate these Terms, engage in fraudulent or illegal conduct, or for any other reason in its sole discretion. Spark will use commercially reasonable efforts, to the extent permitted by Laws, to provide prompt notice of a suspension. You may terminate your use of the Services by providing written notice to Spark at any time. Upon termination of these Terms, you must cease using all Services and delete (or at Spark’s request, return) all of Spark’s Confidential Information in your possession, including on any third-party systems operated on your behalf, and certify such deletion upon Spark’s request.

13. Confidentiality. Except as otherwise set forth in these Terms, each Party agrees that all non-public information, including inventions, code, know-how, business, technical, and financial information disclosed by one party (the “Disclosing Party”) to the other party (“Receiving Party”) constitutes the confidential property of the Disclosing Party (“Confidential Information”), provided that it is designated as “Confidential” at the time of disclosure or, given the nature of the information disclosed and the circumstances surrounding the disclosure, would be deemed to be confidential or proprietary by a reasonable person. For the avoidance of doubt, any information relating to the Services (except for Your Content) will be deemed Spark’s Confidential Information without any marking or further designation. Confidential Information excludes information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information. Except as expressly authorized herein, the Receiving Party will: (1) hold in confidence and not disclose any Confidential Information to third parties; and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under these Terms. The Receiving Party may disclose Confidential Information to its employees, agents, contractors, and other representatives (“Representatives”)



having a legitimate need to know, provided that such Representatives are bound to written confidentiality obligations no less protective of the Disclosing Party than those contained herein. The Receiving Party shall be responsible for any violations of this Section 13 by its Representatives. The Receiving Party may disclose Confidential Information if so required pursuant to a regulation, law, or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party if legally permitted). The Receiving Party acknowledges that disclosure of the Disclosing Party's Confidential Information may cause substantial harm to the Disclosing Party for which damages alone would not be a sufficient remedy, and therefore, upon any such threatened or actual violation of this Section 13 by the Receiving Party, the Disclosing Party will be entitled to seek appropriate injunctive or other equitable relief in addition to whatever other remedies it might have at law.

14. Indemnification.

a. Indemnification by Spark. Spark shall indemnify and hold you harmless from and against any and all third-party claims, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and expenses) (each, a "Claim") alleging that Spark's technology used to provide the Services infringes or misappropriates any U.S. Intellectual Property Rights of such third party. In no event will Spark have obligations or liability under this Section 14(a) arising from: (a) use of the Services in a modified form or in combination with materials not furnished by Spark; (b) Services performed according to your specifications; (c) Your Content; (d) use of the Services in violation of these Terms; or (e) your gross negligence or willful misconduct. For any claim covered by this Section 14(a), Spark may, at its election: (i) procure the rights to use the portion of the Services alleged to be infringing; (ii) replace the alleged infringing portion of the Services with a non-infringing alternative; or (iii) terminate the allegedly infringing portion of the Services or these Terms.

b. Indemnification by You. You will indemnify and hold Spark harmless from and against any and all Claims, arising from: (i) Your Content; (ii) your use of the Services; (iii) your violation of these Terms or any Laws; or (iv) your gross negligence or willful misconduct.

15. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SPARK BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF DATA OR BUSINESS INFORMATION, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS) IN CONNECTION WITH THE SERVICES OR THESE TERMS, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF SPARK HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY LIMITED REMEDY IN THESE TERMS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR SPARK'S INTENTIONAL MISCONDUCT, SPARK'S LIABILITY TO YOU HEREUNDER SHALL AT ALL TIMES BE LIMITED TO DIRECT DAMAGES AND THE AMOUNT OF DAMAGES IN THE AGGREGATE SHALL AT ALL TIMES BE LIMITED TO \$500.

16. MANDATORY ARBITRATION; WAIVER OF CLASS ACTIONS. YOU AGREE TO THE FOLLOWING MANDATORY ARBITRATION PROVISIONS:

a. Agreement to Arbitrate. You and Spark hereby agree to resolve any claims relating to these Terms or the Services through final and binding arbitration by a single arbitrator, except as set forth under "Exceptions to Agreement to Arbitrate" below. This includes disputes arising out of or relating to interpretation or application of this Section 12, including its enforceability, revocability, or validity.

b. Opt-out of Agreement to Arbitrate. You can decline this agreement to arbitrate within 30 days of first accessing the Services by contacting us at legal@sparkadvisors.com.

c. Arbitration Procedures and Fees. The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. The arbitration will be held in the United States county where you live or work, New York, NY, or any other location you and



Spark agree to. The AAA rules will govern payment of all arbitration fees.

d. Exceptions to Agreement to Arbitrate. Either you or Spark may assert claims, if they qualify, in small claims court in New York, NY or any United States county where you live or work. Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Services, Confidential Information, or intellectual property infringement (for example, trademark, trade secret, copyright, or patent rights), without first engaging in arbitration or the informal dispute-resolution process described above. If the agreement to arbitrate is found not to apply to you or your claim, you agree to the exclusive jurisdiction of the state and federal courts in New York, NY to resolve your claim.

e. NO CLASS ACTIONS. You may only resolve disputes with us on an individual basis and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed. If this specific paragraph is held unenforceable, then the entirety of this Section 14 will be deemed void.

17. Modifications. You may not amend or modify any provision of these Terms except in a writing duly signed by both you and Spark. Notwithstanding the foregoing, Spark may update, amend, or modify these Terms at any time with written notice to you and your continued use of the Services after such notice constitutes your agreement thereto.

18. Miscellaneous. These Terms, and all disputes arising out of or related thereto, shall be governed by and construed under the laws of the State of New York without reference to conflict of law principles, and any legal action in connection with these Terms shall be brought exclusively in the federal or state courts located in New York, NY. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by these Terms or Spark's provision of the Services. Nothing in these Terms or Spark's provision of the Services shall be construed as conferring on you any express or implied right, power, or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of Spark. If any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms shall continue to be fully valid, binding, and enforceable. These Terms and your use of the Services is not assignable, transferable or sublicensable by you except with Spark's prior written consent. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained herein is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof. Spark's performance of these Terms and provision of the Services is subject to existing Laws and legal process, and nothing contained in these Terms is in derogation of Spark's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Services or information provided to or gathered by Spark with respect to such use. These Terms do not create any rights for any person who is not a party to it. These Terms, the BAA, and the Privacy Policy set forth the entire agreement between you and Spark with respect to the Services and supersede any prior agreements between you and Spark relating to such subject matter.



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between Spark Health Inc. (“Spark”) and you (“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.



- (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



- (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.



- (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



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 6 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. 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) Modifications. No provision of this Agreement may be waived or amended, except in a writing duly signed by authorized representatives of the Parties. Notwithstanding the foregoing, Spark may update or modify this Agreement at any time with prior written notice to you and your continued use of the Services after such notice constitutes your agreement thereto.
- (e) 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.
- (f) 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: The address on-file with Spark at the time of the notice

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



Email: james@sparkadvisors.com

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.

- (g) 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.
- (h) 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.
- (i) 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.