

## **Business Associate Addendum**

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This Business Associate Addendum (“Addendum”) supplements and is made a part of the PatientNOW Master Service Agreement (the “Agreement”) by and between the individual/company identified in the Bill To portion of the Order Form and Patient NOW, Inc., a Colorado corporation with offices at 6160 S. Syracuse Way, STE B-100, Greenwood Village, CO 80111 (“PatientNOW”), of even date herewith (together, the “Parties”). PatientNOW and Covered Entity may be referred to individually as a “Party” or collectively as the “Parties.”

### **RECITALS**

Covered Entity and PatientNOW are Parties to a services agreement pursuant to which PatientNOW provides certain services to Covered Entity, which may include implementation services, data conversion services, data storage services, consulting services, support services or other services, the terms of which are outlined in more detail in the Agreement and in statements of work or other comparable individual transaction documents. In connection with those services, Covered Entity may disclose to PatientNOW certain individually identifiable health information held by Covered Entity (“Protected Health Information” or “PHI,” as defined at 45 C.F.R. § 160.103) that is subject to protection under the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and related privacy, security, breach notification, and enforcement regulations promulgated by the United States Department of Health and Human Services at 45 C.F.R. Parts 160 and 164 (collectively, “HIPAA”).

The purpose of this Addendum is to help facilitate Covered Entity’s and PatientNOW’s compliance with the requirements of HIPAA when (i) Covered Entity is a “covered entity,” and (ii) PatientNOW is the recipient of Protected Health Information from Covered Entity under the Agreement and is acting as a “business associate” of Covered Entity, as those terms are defined by HIPAA.

Covered Entity acknowledges that PatientNOW may act in a capacity other than as a business associate and that this Addendum only applies to the extent that PatientNOW is acting as a business associate for Covered Entity. Covered Entity further acknowledges that PatientNOW is not acting as an “agent” for Covered Entity, as that term is defined by HIPAA. In this Addendum, Covered Entity will be referred to as “Covered Entity,” and PatientNOW will be referred to as “Business Associate.”

**NOW, THEREFORE**, in consideration of the mutual promises and other consideration contained in this Addendum, the delivery and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

1. **Definitions.** Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth in HIPAA.
2. **Applicability.** This Addendum shall be applicable to Protected Health Information (i) received by Business Associate from Covered Entity or (ii) created, received, maintained or transmitted by Business Associate on behalf of Covered Entity.
3. **Minimum Necessary Disclosures.** In accordance with 45 C.F.R. § 164.502(b), (i) Covered Entity shall limit its use, disclosures, and requests of Protected Health Information to Business Associate to the minimum necessary to accomplish the services Business Associate is performing for Covered Entity, and (ii) Business Associate shall further limit its use, disclosures, and requests of Protected Health Information received from Covered Entity by exercising reasonable discretion to determine what constitutes the minimum necessary Protected Health Information to perform or have performed the services Business Associate is performing for Covered Entity.
4. **Scope of Use of Protected Health Information.** Business Associate shall not use or disclose Protected Health Information for any purpose other than:
  - a. As permitted or required by the Agreement or to carry out the activities specified in the Agreement;

- b. For data aggregation or management and administrative activities of Business Associate;
- c. To carry out Business Associate's legal responsibilities; and
- d. As otherwise permitted or required by law.

5. **Use of Non-Individually Identifiable Health Information.** Covered Entity expressly authorizes Business Associate to create, use and disclose information received from Covered Entity that is not individually identifiable health information (as defined at 45 CFR § 160.103) as permitted under law, including information that has been de-identified consistent with all requirements of 45 CFR § 164.514.

6. **Safeguards for the Protection of Protected Health Information.** Business Associate shall (i) use safeguards that are designed to appropriately prevent the use or disclosure (other than as provided for by this Addendum) of Protected Health Information that Business Associate processes or maintains on Covered Entity's behalf and (ii) implement administrative, physical and technical safeguards that are designed to reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Covered Entity's behalf. Business Associate shall comply with the Security Rule requirements for Business Associates in 45 CFR §§ 164.306, 164.308, 164.310, 164.312, 164.314, and 164.316.

7. **Reporting of Unauthorized Uses or Disclosures.** Without unreasonable delay and in any event no later than sixty (60) calendar days after discovery, and in compliance with HIPAA, (i) Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information of which Business Associate becomes aware that is not provided for or permitted in the Agreement, including this Addendum, and (ii) Business Associate shall report to Covered Entity any Security Incident and any Breach of Unsecured Protected Health Information of which it becomes aware within a reasonable time following the discovery by Business Associate of such Security Incident or Breach as required by 45 CFR § 164.410, and any security incident of which it becomes aware. Notwithstanding the foregoing, the Parties understand that pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks and any combination of the above shall not be considered a security incident, so long as no such incident results in the defeat or circumvention of any security control, or in the unauthorized access, use or disclosure of PHI provided by Covered Entity.

8. **Use of Subcontractors.** In accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2), to the extent that Business Associate authorizes subcontractors to create, receive, maintain or transmit Protected Health Information including Electronic Protected Health Information on behalf of Business Associate, Business Associate shall cause each such subcontractor and agent to sign an agreement with Business Associate containing at least as restrictive provisions and conditions related to the protection of Protected Health Information and/or Electronic Protected Health Information as those that apply to Business Associate under this Addendum.

9. **Authorized Access to and Amendment of Protected Health Information.** To the extent and only to the extent that Business Associate maintains PHI in Designated Record Sets, Business Associate shall (i) within thirty (30) days of a written request by Covered Entity for access to PHI about an Individual contained in any Designated Record Set of Covered Entity maintained by Business Associate, make available to Covered Entity all such Protected Health Information held by Business Associate in accordance with 45 C.F.R. §164.524, and (ii) within sixty (60) days of a written request by Covered Entity to amend PHI, incorporate any amendments Covered Entity makes to such PHI in accordance with 45 C.F.R. §164.526. If Business Associate receives a request for access to PHI directly from an Individual, Business Associate shall direct the Individual to contact Covered Entity directly. The requirements of this section may be satisfied by Business Associate providing electronic access to Covered Entity of Covered Entity data maintained or processed by Business Associate pursuant to this Addendum.

10. **Accounting of Disclosures of Protected Health Information.** Business Associate shall keep records of disclosures of Protected Health Information made by Business Associate (the "Disclosure

Accounting”) on an ongoing basis for a period of six (6) years, except for disclosures exempt from accounting in 45 C.F.R. § 164.528(a)(1); *provided, however*, that as of the date by which compliance is required, where electronic health records are used or maintained with respect to PHI, the exception under 45 C.F.R. §164.528(a)(1)(i) shall not apply to disclosures through such electronic health records, in which case Business Associate shall retain such Disclosure Accounting on an ongoing basis for a period of three (3) years. Business Associate shall provide the Disclosure Accounting to Covered Entity no later than sixty (60) days of receiving a written request therefor from Covered Entity.

**11. Business Associate Response to Direct Requests by Individuals.** For Protected Health Information held by Business Associate, in the event that Business Associate receives any requests from Individuals requesting access or amendment to such individual’s PHI, or an accounting of disclosures of PHI, Business Associate will promptly provide notice to Covered Entity of such request so that Covered Entity may respond directly to the individual regarding such request. If Business Associate receives notice that Covered Entity has not timely i) provided access to individuals requesting access in accordance with 45 CFR § 164.524, ii) made amendments to Protected Health Information requested by individuals in accordance with 45 CFR § 164.526, or iii) provided an accounting to individuals requesting an accounting of disclosure of Protected Health Information in accordance with 45 CFR § 164.528, then, at Covered Entity’s expense, Business Associate may respond directly to any such individuals who ask Business Associate for such access, amendment, or accounting. In such event, Business Associate will notify Covered Entity and Covered Entity shall cooperate with Business Associate and shall reimburse Business Associate for all costs and expenses related to any such access granted, amendments made, or accounting provided by Business Associate.

**12. Health and Human Services.** Business Associate shall make its internal practices, books and records related to the use and disclosure of Protected Health Information under the Agreement and this Addendum available to Secretary of the Department of Health and Human Services for the purpose of determining Covered Entity’s or Business Associate’s compliance with 45 CFR §§ 160.300 et seq., 164.302 et seq., and 164.500 et seq.

**13. Future Protections of Protected Health Information.** Upon the expiration or earlier termination of the Agreement for any reason, if feasible, Business Associate shall return to Covered Entity, or, at Covered Entity’s direction, destroy, all Protected Health Information in any form. If such return or destruction is not feasible, Business Associate shall extend the protections of this Addendum to the Protected Health Information and shall limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

**14. Prohibition on Sale of Protected Health Information.** Except as provided in 45 CFR § 164.502(a)(5)(ii), neither Business Associate nor Covered Entity shall receive remuneration in exchange for any Protected Health Information of an individual absent a valid authorization from such individual.

**15. HIPAA Provisions Incorporated.** To the extent not incorporated or referenced in this Addendum, other requirements applicable to Business Associates under HIPAA, and all related regulations, are hereby incorporated by reference into this Addendum as obligations of Business Associate as of their respective compliance dates.

**16. Termination of the Agreement.** Covered Entity may terminate those portions of the Agreement that require Business Associate to use or disclose Protected Health Information in the event Business Associate materially breaches this Addendum. Such termination shall be in accordance with and subject to any rights to cure and payment obligations specified in the Agreement. Business Associate may terminate those portions of the Agreement which require Business Associate to use or disclose Protected Health Information in the event Covered Entity breaches a material term of this Addendum or in the event Business Associate becomes aware that Covered Entity is in violation of any of the substantive requirements of subsection of 45 CFR § 164.504(e)(2) otherwise imposed upon Covered Entity by HIPAA, which Covered Entity fails to cure within a reasonable time.

17. **Effect on Agreement.** This Addendum is not intended to, nor shall it be construed to, reduce or diminish any of Business Associate's or Covered Entity's obligations under the Agreement. Accordingly, except as to the extent expressly inconsistent with this Addendum, all other terms of the Agreement shall remain in full force and effect and shall not be modified, diminished or reduced hereby. There are no intended third party beneficiaries under this Addendum.

18. **Assignment.** Neither Party may assign this Addendum, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither Party will unreasonably withhold such consent. The assignment of this Addendum, in whole or in part, to its parent company if the Party is a wholly owned subsidiary, or to any majority-owned subsidiary in the United States or to a successor organization by merger or acquisition does not require the consent of the other. It is not considered an assignment for Business Associate to divest a portion of its business in a manner that similarly affects all of its Covered Entity customers.

19. **Other Terms.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Privacy or Security Rules and any other applicable law. This Agreement may be amended or modified only in a writing signed by the Parties. Any ambiguity in this Agreement will be interpreted to permit compliance with the HIPAA Privacy or Security Rules. A reference in this Agreement to a section in the HIPAA Privacy or Security Rules means the section as in effect or as amended. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Addendum and any other agreements between the Parties evidencing their business relationship. This Agreement, together with the underlying services Agreement, constitutes the entire agreement of the Parties relating to Business Associate's use or disclosure of Protected Health Information.

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Each party accepts the terms of this Addendum by signing this Addendum (or another document that incorporates it by reference) by hand or electronically. Once signed, any reproduction of this Addendum made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original.