

# Data Use Agreement

This Data Use Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date") by \_\_\_\_\_ ("Practice"), and FirstVitals Health and Wellness Inc ("Data Recipient") for purposes of compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology Act of 2009 (the HITECH Act), as HIPAA and the HITECH Act may be amended from time to time.

## WITNESSETH:

WHEREAS, PRACTICE may Disclose or make available to Data Recipient, and Data Recipient may use, disclose, receive, transmit, maintain or create from, certain information in conjunction with project; and

WHEREAS, PRACTICE and Data Recipient are committed to compliance with HIPAA, the HITECH Act, and regulations promulgated there under; and

WHEREAS, the purpose of this Agreement is to satisfy the obligations of the parties under HIPAA and the HITECH Act and to protect the integrity and confidentiality of certain information disclosed or made available to Data Recipient and certain information that Data Recipient uses, discloses, receives, transmits, maintains or creates, from PRACTICE data.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## 1. DEFINITIONS

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in HIPAA and the HITECH Act.

- A. Individual shall have the same meaning as the term "individual" in 45 CFR Sect. 164.501 of the HIPAA Privacy Rule and shall include a person who qualifies as a personal representative in accordance with 45 CFR Sect. 164.502(g) of the Privacy Rule.
- B. Limited Data Set shall have the same meaning as the term "limited data set" in 45 CFR 164.514(e) of the HIPAA Privacy Rule.
- C. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended from time to time.
- D. Protected Health Information or PHI shall have the same meaning as the term "protected health information" in 45 CFR Sect. 164.501 of the Privacy Rule, to the extent such information is created or received by Data Recipient from PRACTICE.
- E. Required by Law shall have the same meaning as the term "required by law" in 45 CFR Sect. 164.501 of the Privacy Rule.

## **2. SCOPE AND PURPOSE**

- A. This Agreement sets forth the terms and conditions pursuant to which PRACTICE will disclose the Limited Data Set to the Data Recipient.
- B. Data Recipient will only use or disclose the Limited Data Set for the limited purposes necessary to engage in the project described herein: To provide a third-party registry which can report the specific eQMs at the CPC+ Practice Site level as required in CPC+. Data Recipient represents that Data Recipient's request that PRACTICE disclose certain PHI to Data Recipient is limited in scope to the minimum information necessary to accomplish Data Recipient's purpose in connection with the Project.
- C. In addition to the Data Recipient, the following company and its individuals, or classes of individuals, who are permitted to use or receive the Limited Data Set for purposes of the Project, include: Persivia as the Data Recipient contracted Health IT support team.

## **3. OBLIGATIONS AND ACTIVITIES OF DATA RECIPIENT**

- A. Data Recipient agrees to not use or disclose the Limited Data Set for any purpose other than as described in this Agreement or as required by law.
- B. Data Recipient agrees to use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement.
- C. Data Recipient agrees that it shall obtain and maintain, for the term of this Agreement, a written agreement with each contractor or with any agent, including a subcontractor, to whom it provides any portion of the Limited Data Set holding them to the same restrictions and conditions that apply through this Agreement to the Data Recipient with respect to such information. Further, upon request, Data Recipient will provide copies of such agreements to PRACTICE.
- D. Data Recipient agrees not to identify the information contained in the Limited Data Set or contact any individual whose PHI is contained in the Limited Data Set.
- E. Data Recipient will indemnify, defend and hold harmless PRACTICE, and its trustees, agents, officers, and employees, and its respective successors, subcontractors and assigns ("Indemnitees") from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any unauthorized or prohibited Use or Disclosure of the Limited Data Set or any other breach of this Agreement by Data Recipient or any subcontractor, agent or person under Data Recipient's control or failure to perform the obligations hereunder by Data Recipient, its employees, officers, volunteers, assigns or contractors.
- F. Data Recipient agrees to notify PRACTICE in writing within five (5) business days of Data Recipient's receipt of any request or subpoena for any portion of the Limited Data Set or any information related to this Agreement. To the extent that PRACTICE decides to assume responsibility for challenging the validity of such request, Data Recipient will cooperate fully with PRACTICE in any such challenge.

- G. Data Recipient agrees to notify the Chief Compliance and Quality Officer of PRACTICE of any use or disclosure of PHI by Data Recipient not permitted by this Agreement, any Security Incident involving electronic PHI, and any Breach of Unsecured Protected Health Information within five (5) business days.
1. Data Recipient shall provide the following information to PRACTICE within ten (10) business days of discovery of a breach except when despite all reasonable efforts by Data Recipient to obtain the information required, circumstances beyond the control of the Data Recipient necessitate additional time. Under such circumstances Data Recipient shall provide to PRACTICE the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) calendar days from the date of discovery of a breach:
    - a. the date of the breach;
    - b. the date of the discovery of the breach;
    - c. a description of the types of unsecured PHI that were involved;
    - d. identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; and
    - e. any other details necessary to complete an assessment of the risk of harm to the individual.
  2. PRACTICE will be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as the Office of Civil Rights and the media, as required by Sec. 13402 of the HITECH Act, 42 U.S.C.A. § 17932;
  3. Data Recipient agrees to pay actual costs for notification and of any associated mitigation incurred by PRACTICE, such as credit monitoring, if PRACTICE determines that the breach is significant enough to warrant such measures.
  4. Data Recipient agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to PRACTICE in the time and manner reasonably requested by PRACTICE

#### **4. TERM AND TERMINATION**

- A. The provisions of this Agreement shall be effective as of the Effective Date and shall terminate when all of the Limited Data Set provided by PRACTICE to Data Recipient is destroyed or returned to PRACTICE, or, if it is infeasible to return or destroy the Limited Data Set, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Upon PRACTICE's knowledge of a material breach by Data Recipient, PRACTICE shall take any or all of the following actions:
- i. Provide Data Recipient with written notice of the breach and an opportunity to cure the breach within ten (10) days of receipt of such notice. If Data Recipient fails to cure the breach within the notice period, PRACTICE may immediately terminate this Agreement; or
  - ii. Immediately terminate this Agreement (without opportunity to cure) if PRACTICE determines, in its sole discretion, that Data Recipient has breached a material term of this Agreement; or
  - iii. PRACTICE shall report the violation to the Office of Civil Rights.

IN WITNESS WHEREOF, the parties have executed this Agreement effective upon the Effective Date set forth above.

**APPROVED BY:**

**FirstVitals Health and Wellness Inc**

\_\_\_\_\_

\_\_\_\_\_  
Print Name: Ernest G. Lee

Title: Chief Executive Officer

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_