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## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) BUSINESS ASSOCIATE AGREEMENT

**(Please complete all highlighted sections.)**

This Business Associate Agreement (“BAA”) sets out the responsibilities and obligations of Paid In Full, Inc. (“Associate”) as a Business Associate (as defined at 45 C.F.R. § 160.103) of The city of Bisbee (“Covered Entity”) pursuant to the agreement between Associate and Covered Entity, as of the 4<sup>th</sup> day of August, 2020, as well as all future agreements entered into by the Parties (collectively, the “Agreement”). Associate and Covered Entity (individually a “Party” and collectively the “Parties”) agree to the terms and conditions of this BAA in order to comply with the use and disclosure of Protected Health Information (“PHI”) (as defined at 45 C.F.R. § 160.103) provisions of the Standards for Privacy of Individually Identifiable Health Information, at 45 C.F.R. Parts 160 and 164, Subparts A and E, as amended from time to time (the “Privacy Rule”); the Security Standards for the Protection of Electronic PHI, 45 C.F.R. Parts 160 and 164, Subparts A and C (the “Security Rule”); and the standards for Notification in the Case of Breach of Unsecured PHI, 45 C.F.R. Part 164, Subpart D (the “Breach Notification Rule”) (collectively, the “HIPAA Rules”). Unless otherwise provided herein, all capitalized terms in this BAA will have the same meaning as provided under the HIPAA Rules and HITECH (as defined below). Associate and Covered Entity will comply with the terms of this BAA for the duration of the Agreement and for such other continuing periods as provided in this BAA. This BAA shall supersede any and all prior business associate agreements entered into between the Parties.

### 1. USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.

- a. **Performance of Services.** Associate will use and disclose PHI only for those purposes necessary to perform its duties, obligations and functions under the Agreement, or as otherwise expressly permitted or required by this BAA or as Required by Law. Associate will not use or further disclose any PHI in violation of this BAA or in a manner that, if done by Covered Entity, would violate the Privacy Rule.
- b. **Limited Data Sets.** Associate will limit any uses, disclosures, or requests of PHI to a Limited Data Set, as defined in 45 C.F.R. § 164.514(e)(2), or if needed by Associate to the minimum necessary PHI required to accomplish the intended purpose of the use, disclosure, or request, as defined by the Privacy Rule, pursuant to the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and any regulations or guidance promulgated thereunder by the Secretary. For any disclosures of PHI pursuant to this BAA, the Party disclosing the PHI shall determine what constitutes the minimum necessary to accomplish the intended purpose of the disclosure.
- c. **Data Aggregation.** Associate may use PHI to perform data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

d. **Associate's Management and Administration**. Associate may use or disclose PHI for the necessary management and administration of Associate, or to carry out the legal responsibilities of Associate, provided that if Associate makes a disclosure of PHI:

- i. The disclosure is Required by Law; or
- ii. Associate first secures written assurances from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) use or disclose the PHI only as required by law or for the purposes for which it was disclosed to the recipient; and (iii) notify the Associate of any breaches in the confidentiality of the PHI.

Notwithstanding the foregoing, the Parties explicitly agree that unless the de-identification requirements in Section 1(e) of this BAA are met, Associate's use of PHI in demonstrating its services or product to an outside third party is strictly prohibited by this BAA.

e. **De-Identification**. Associate may de-identify the PHI, provided that such de-identification is in accordance with 45 C.F.R. § 164.514(b)(92) and such resulting de-identified information is only used or disclosed for Associate's internal business purposes. Associate may not commercialize or sell the de-identified information to a third party.

f. **Prohibition on Off-Shoring PHI**. Associate agrees that no PHI may be created, received, maintained, accessed, or transmitted outside of the United States of America, which shall be construed as one of the fifty United States or one of the United States territories (i.e., American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands).

2. **SAFEGUARDS FOR PROTECTED HEALTH INFORMATION**. Associate will implement appropriate safeguards to prevent any use or disclosure of PHI not otherwise permitted in this BAA. Associate also will implement administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of the electronic PHI, if any, that Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Associate will also comply with the applicable requirements of Subpart C of Part 164 of the Security Rule in the same manner such provisions apply to Covered Entity.

### 3. REPORTS OF IMPERMISSIBLE USE OR DISCLOSURE.

a. **Notification of an Impermissible Use or Disclosure of PHI**. Associate will report to Covered Entity any use or disclosure of PHI not permitted by this BAA, including any Breach of Unsecured PHI, as soon as reasonably practicable but in all events, within five (5) business days of its discovery.

b. **Notification of Security Incidents**. Associate also will report to Covered Entity any Security Incident of which it becomes aware within five (5) business days of its discovery. Notwithstanding the foregoing, Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Covered Entity acknowledges and agrees no additional notification to Covered Entity of such unsuccessful Security Incidents is required. However, to the extent that Associate becomes aware of an unusually high number or pattern of unsuccessful Security Incidents due to the repeated acts of a single party, Associate shall notify Covered Entity of these attempts and provide the name, if available, of said party. At the request of Covered Entity, Associate shall use its best efforts to identify the date of the Security Incident, Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known.

- c. **Content of Notifications.** Associate's notices provided under this Section 3 will include, to the extent possible, the identification of each Individual whose PHI has been, or is reasonably believed by Associate to have been, accessed, acquired, used, or disclosed during or as a result of the impermissible use or disclosure of PHI, or a Security Incident ("Security Event"). Associate shall also provide Covered Entity with at least the following information: a description of the Security Event, including the date of the Security Event and date of discovery, if known; a description of the types of PHI involved in the Security Event; any steps Individuals should take to protect themselves from potential harm as a result of the Security Event; and any other information requested by Covered Entity related to the Security Event. Associate shall supplement such notice with further information as it becomes available, even if such information becomes available after Individuals have been notified of the Security Event.
  - d. **Cooperation by Associate.** Associate agrees to cooperate with Covered Entity in the investigation of a Security Event and understands and agrees that Covered Entity in its sole discretion will determine whether or not a Security Event is a Breach and/or triggers notification obligations.
  - e. **Obligation to Provide Notifications.** In the event that Associate or its Workforce members or Subcontractors cause a Security Event or a Security Event occurs while PHI is in Associate's possession or is being transmitted by Associate, Associate agrees that Covered Entity may, in its sole discretion, require Associate to provide all notifications that Covered Entity is required to make pursuant to the Breach Notification Rule and any other applicable laws. Covered Entity shall have the right to review, direct, and approve or reject the contents or manner of such notifications.
  - f. **Cost Reimbursement and Indemnification.** Associate also agrees to indemnify and reimburse Covered Entity for any costs incurred in investigating, mitigating, and otherwise responding to a Security Event caused by Associate or its Workforce or Subcontractors, or a Security Event occurs while PHI is in Associate's possession or is being transmitted by Associate, including costs related to providing legally required notifications, as well as credit monitoring services for at least one (1) year to the extent the Security Event involved social security numbers or financial account information.
4. **SUBCONTRACTORS.** In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), if Associate provides PHI to a Subcontractor, Associate shall ensure that the Subcontractor agrees in writing to substantially the same, but at least as stringent and protective as to Covered Entity and the PHI, as the restrictions and conditions that apply in this BAA to Associate with respect to such information, including the safeguards required by Section 2. Associate shall maintain a list of its Subcontractors and will provide Covered Entity with a copy of such list upon reasonable request.
5. **OBLIGATIONS REGARDING ASSOCIATE PERSONNEL.** Associate will appropriately inform and train all of its Workforce members ("Associate Personnel"), whose services may be used to satisfy Associate's obligations under the Agreement and this BAA of such Associate Personnel's HIPAA Rule and HITECH obligations so as to enable Associate to comply with the terms of this BAA. Associate represents and warrants that the Associate Personnel are under legal obligation to Associate, by contract or otherwise, sufficient to enable Associate to fully comply with the provisions of this BAA.
6. **ACCESS TO PHI.**
- a. **Covered Entity Access.** Within five (5) business days of a request by Covered Entity for access to PHI held by Associate in a Designated Record Set, Associate will make the requested PHI available to Covered Entity, in the time, manner, and format requested by Covered Entity, including electronically if Associate maintains the PHI electronically and the requested form and format is readily producible, or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual. Any fee that Associate may charge for providing the access required hereunder must be reasonable, cost-based, and determined in accordance with 45 C.F.R. § 164.524(c)(4).

- b. **Individual Access.** If an Individual requests access to PHI directly from Associate, Associate will notify the Individual that it will forward the request to Covered Entity. Within five (5) business days of the request, Associate will forward such request in writing to Covered Entity. Covered Entity will be responsible for making all determinations regarding the grant or denial of an Individual's request for PHI and Associate will make no such determinations. Only Covered Entity will release PHI to the Individual pursuant to such a request.
7. **AMENDMENT OF PHI.** Within five (5) business days of receiving a request from Covered Entity to amend an Individual's PHI held by Associate in a Designated Record Set, Associate will provide such information to Covered Entity for amendment. If Covered Entity's request includes specific information to be included in the PHI as an amendment, Associate will incorporate such amendment within five (5) business days of receipt of Covered Entity's request. Associate will forward to Covered Entity within five (5) business days any requests by Individuals to Associate to amend PHI within its or Covered Entity's possession. Covered Entity will be responsible for making all determinations regarding amendments to PHI, and Associate will make no such determinations.
8. **ACCOUNTING OF DISCLOSURES; REQUESTS FOR DISCLOSURE.**
- a. **Disclosure Records.** Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. As of the compliance date set forth in the regulations promulgated under HITECH or as otherwise determined by the Secretary, in addition to the accounting of disclosure obligations required under 45 C.F.R. § 164.528, Associate shall account for all disclosures of PHI made through an Electronic Health Record in accordance with all applicable regulations.
- b. **Data Regarding Disclosures.** For each disclosure for which Associate must maintain documentation under Section 8(a), Associate will record and maintain the following information:
- The date of disclosure;
  - The name of the entity or person who received the PHI, and, the address of such entity or person, if known;
  - A description of the PHI disclosed; and
  - A brief statement of the purpose of the disclosure.
- c. **Individual Request for Disclosure Records.** Within five (5) business days of receipt of a notice from Covered Entity to Associate of an Individual's request for an accounting of disclosures, Associate will provide Covered Entity with the record of disclosures requested in the notice.
- d. **Individual Request to Associate.** If an individual requests an accounting of disclosures directly from Associate, Associate will notify the Individual that he or she will receive such accounting from Covered Entity. Associate will forward the request to Covered Entity within five (5) business days of Associate's receipt of the request, and will make its records of disclosures available to Covered Entity as otherwise provided in this Section. Covered Entity will be responsible for preparation and delivery of the records of disclosure to the Individual. Associate will not provide an accounting of its disclosures directly to the Individual.

- e. **Survival of Obligations.** Associate's obligations related to maintaining a disclosure record and providing the disclosure record to Covered Entity as required by this Section 8 shall survive for six (6) years from the effective date of the relevant Agreement, Associate shall provide Covered Entity with its disclosure record which reflects disclosures made by Associate over the six (6) years immediately preceding the date of termination.
9. **REQUESTS FOR RESTRICTIONS.** If Covered Entity advises Associate of any changes in, or restrictions to the permitted use or disclosure of PHI provided to Associate, Associate will restrict use or disclosure of PHI consistent with Covered Entity's instructions. If Associate receives a request to restrict the disclosure of PHI directly from an Individual, Associate shall promptly notify Covered Entity of such request, and Covered Entity shall be responsible for making the determination as to whether Associate shall comply with the Individual's request.
10. **DELEGATION OF OBLIGATIONS.** To the extent Associate is clearly required by the terms of the Agreement to carry out Covered Entity's obligations under the Privacy Rule, Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligations.
11. **MITIGATION PROCEDURES.** Associate will mitigate, to the maximum extent practicable, any harmful effect that is known to Associate arising from its, its Workforce's, or its Subcontractors' Use or Disclosure of PHI in a manner that violates this BAA.
12. **INDEMNIFICATION.** The following indemnification provisions shall apply to this BAA and shall survive the termination of the Agreement or this BAA:
- a. To the fullest extent permitted by law, Associate, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless Covered Entity, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, investigations or audits by state or federal government agencies, suits, actions, claims, damages, liability, penalties, losses, expenses, including but not limited to, attorney fees, defense costs, court costs, the cost of appellate proceedings, and the costs of responding to and defending against an investigation or audit, and all claim adjusting and handling expenses, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Associate relating to work or services in the performance of this BAA, including but not limited to, any Subcontractor, or Associate's or Subcontractor's Workforce, regardless of whether or not caused in part by the active or passive negligence of a party indemnified hereunder including Covered Entity, its agents, representatives, officers, directors, officials and employees.
- b. If any claim, action or proceeding is brought against Covered Entity by reason of any event that is the subject of this BAA and or described herein, upon demand made by Covered Entity, Associate, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of Covered Entity by an attorney hired by Associate, or if covered by insurance, Associate's insurer, all of which must be approved by Covered Entity, which approval shall not be unreasonably withheld or delayed. Covered Entity shall cooperate with all reasonable efforts in the handling and defense of such claim. Included in the foregoing, Covered Entity may engage its own attorney to defend or assist in its defense.

Any settlement of claims shall fully release and discharge the indemnified parties from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by Covered Entity, which approval shall not be unreasonably withheld or delayed. If Associate neglects or refuses to defend Covered Entity as provided by this BAA, any recovery or judgment against Covered Entity for a claim covered under this BAA shall conclusively establish Associate's liability to Covered Entity in connection with such recovery, fine, penalty, or judgment. Further, if Covered Entity desires to settle such dispute, Covered Entity shall be entitled to settle such dispute in good faith and Associate shall be liable for the amount of such settlements. Regardless of settlement, fine, penalty, or judgment, Associate shall be liable for all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses.

- c. Any limitations of liability contained in the Agreement shall not apply to the indemnification requirements of this Section.
- d. In addition to the indemnification obligations set forth herein, Associate shall make itself and any Subcontractors or Workforce members assisting Associate in the performance of its obligations under the Agreement or this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of HIPAA, the HITECH Act, the HIPAA Rules, or other laws related to security and privacy by Associate or its Subcontractors or Workforce members.
- e. This Section shall survive termination of this BAA.

### 13. RESPONSIBILITIES UPON TERMINATION.

- a. **Return of PHI; Destruction.** Within fifteen (15) days of termination of this BAA, Associate will return to Covered Entity all PHI received from Covered Entity or created or received by Associate on behalf of Covered Entity which Associate maintains in any form or format (including copies thereof), and Associate will not maintain or keep in any form or format any portion of the PHI. Alternatively, Associate may, upon Covered Entity's written consent, destroy all such PHI and provide written documentation of such destruction to Associate. The requirement to return or destroy such PHI will apply to all Subcontractors of Associate. Associate will be responsible for recovering any PHI from such Subcontractors. If Associate cannot obtain the PHI from any Subcontractor, Associate will so notify Covered Entity and will require that such Subcontractor directly return PHI to Covered Entity or otherwise destroy such PHI, subject to the terms of this Section.
- b. **Return or Destruction of PHI Infeasible.** If Associate believes that returning or destroying PHI in its or its Subcontractors' possession at the termination of this BAA is infeasible, it will provide written notice to Covered Entity within five (5) business days of the effective date of termination of this BAA. Such notice will set forth the circumstances that Associate believes makes the return or destruction of PHI infeasible and the alternative measures that Associate recommends for assuring the continued confidentiality and security of the PHI. Covered Entity promptly will notify Associate of whether it agrees that the return or destruction of PHI is infeasible. If Covered Entity agrees that return or destruction of PHI is infeasible, Associate agrees to extend all protections, limitations and restrictions of this BAA to the PHI retained after termination of this BAA and to limit further uses or disclosures to those purposes that make the return or destruction of the PHI infeasible. Any such extended protections, limitations and restrictions will apply to any Subcontractors of Associate for whom return or destruction of PHI is determined by Covered Entity to be infeasible. If Covered Entity does not agree that the return or destruction of PHI from Associate or its Subcontractors is infeasible, Covered Entity will provide Associate with written notice of its decision, and Associate and its Subcontractors will proceed with the return or destruction of the PHI pursuant to the terms of this Section within fifteen (15) days of the date of Covered Entity's notice.

14. **TERMINATION.** Covered Entity and Associate may immediately terminate this BAA upon written notice to the other Party if Covered Entity or Associate determines in its discretion that the other Party has breached a material term of this BAA. Alternatively, the non-breaching Party may elect to provide the breaching Party with thirty (30) days' advance written notice of the breaching Party's breach of any term or condition of this BAA, and afford the breaching Party the opportunity to cure the breach to the satisfaction of the non-breaching Party within twenty (20) days of such notice. If the breaching Party fails to timely cure the breach, as determined by the non-Breaching Party, the BAA will terminate this BAA as provided in the non-breaching Party's notice. This BAA will automatically terminate upon expiration or termination of the last effective Agreement between the Parties, unless the Parties explicitly agree in writing to extend the term of this BAA beyond the expiration or termination of the last effective Agreement.

15. **ASSOCIATE BOOKS AND RECORDS.**

- a. **Covered Entity Access.** Following a Security Event, or for purposes of Covered Entity responding to a government inquiry or judicial or administrative process, Associate will, within five (5) business days of Covered Entity's written request, make available during normal business hours at Associate's offices, all records, books, agreements, policies and procedures relating to the use or disclosure of PHI for the purpose of allowing Covered Entity to determine Associate's compliance with the Agreement and this BAA.
- b. **Government Access.** Associate will make its internal practices, books and records on the use and disclosure of PHI available to the Secretary to the extent required for determining compliance with the Privacy Rule. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by Associate or Covered Entity as a result of this Section. Associate shall also make its policies and procedures, and documentation required by the Security Rule relating to the safeguards in Section 2, available to the Secretary for purposes of determining Covered Entity's and Associate's compliance with the Security Rule.

16. **NOTICES.**

- a. Any notices required under this BAA will be sent to the Parties at the following address by first class mail, fax or hand delivery:

**Covered Entity:**

Entity Name: City of Bisbee

Address: 9155. Tovreaville Rd. #4601

City, State, Zip: Bisbee, AZ 85603

Fax: 520-432-6069

Attn: Ken Bagley, Finance Director

**Associate:**

Paid In Full, Inc.

PO Box 43228

Phoenix, AZ 85080

Fax: 623-298-5688

Attn: Brad Klein

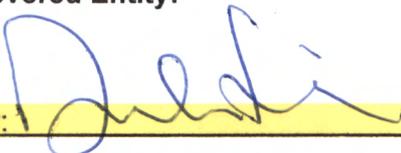
- b. Any notice, report or other communication required under this BAA shall be in writing and shall be delivered personally, telegraphed, emailed, sent by facsimile transmission, or sent by U.S. mail.

17. MISCELLANEOUS.

- a. **Relationship of Parties.** In the performance of the work, duties and obligations described in this BAA or the Agreement, the Parties acknowledge and agree that each Party is at all times acting and performing as an independent contractor and at no time shall the relationship between the Parties be construed as a partnership, joint venture, employment, principal / agent relationship, or master / servant relationship.
- b. **Regulatory References.** A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended and for which compliance is required.
- c. **Amendment.** No change, amendment, or modification of this BAA shall be valid unless set forth in writing and agreed to by both Parties. Notwithstanding the foregoing, the Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this BAA may be required to ensure compliance with such developments. The Parties specifically agree to take such action as may be necessary from time to time for the Parties to comply with the requirements of the HIPAA Rules and HITECH. Covered Entity shall provide written notice to Associate to the extent that any final regulation or amendment to the HIPAA Rules promulgated by the Secretary requires an amendment to this BAA. The Parties agree to negotiate an amendment to this BAA in good faith; however, either Party may terminate this BAA upon ninety (90) days written notice to the other Party if the Parties are unable to reach an agreement.
- d. **Interpretation.** Any ambiguity in this BAA shall be resolved to permit Covered Entity and Associate to comply with the HIPAA Rules and HITECH. The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA, provided that any provision in the Agreement that is more stringent or protective of PHI than the terms of this BAA shall govern.

IN WITNESS WHEREOF, each Party has caused this BAA to be executed by its duly authorized representative as of the 10<sup>th</sup> day of August, 2020.

Covered Entity:

By: 

Print Name: David M. Smith

Title: Mayor

ASSOCIATE:

By: 

Print Name: Brad Klein

Title: President