

### Obligations of PhDx as a Business Associate under HITECH ACT

The Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub.L. 111-5, Div. A. Title XIII and Title IV of Div. B.) (generally effective February 17, 2010) imposes additional duties and obligations on HIPAA business associates. PhDx takes seriously its obligations to protect the privacy and security of health information that it creates and maintains on behalf of covered entities. Effective February 17, 2010, PhDx will comply with all duties and obligations imposed upon it as a business associate under the HIPAA regulations and the HITECH ACT.

Effective February 17, 2010, with respect to each business associate relationship between PhDx and a covered entity, PhDx will comply with the duties and obligations imposed upon business associates under the HITECH Act, as set out in the [PhDx HITECH Business Associate Terms and Conditions Revisions](#).

Separately, a HITECH Act Business Associate Agreement Amendment is being sent to each covered entity for which PhDx is currently acting as a business associate.

If you have any questions on this matter, please contact: Felicia Madrid at [fmadrid@PhDx.com](mailto:fmadrid@PhDx.com).

## **PhDx HITECH Business Associate Terms and Conditions Revisions**

Effective February 17, 2010, PhDx, as a part of its business associate relationship with any Covered Entity, will comply with the following terms and conditions:

1. **Definitions.** A capitalized term used herein shall have the meaning ascribed to it below, or if not defined below, under the HIPAA Regulations or the HITECH Act:

“Breach” has the meaning assigned to the term “breach” under Section 13400(1) of the HITECH Act.

“Business Associate” means a “business associate” under the HIPAA Regulations.

“Covered Entity” means a “covered entity” under the HIPAA Regulations that is a party to a business associate agreement with PhDx.

“HITECH Act” means the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub.L. 111-5, Div. A. Title XIII and Title IV of Div. B.) (generally effective February 17, 2010).

“HIPAA Regulations” means the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information [45 C.F.R. Parts 160 and 164] promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, modified, or renumbered.

“PhDx” means PhDx Systems, Inc., a Delaware corporation.

“PHI” means “protected health information” under the HIPAA Regulations.

“Secretary” means the Secretary of the U.S. Department of Health and Human Services.

“Unsecured PHI” has the meaning assigned to the term “unsecured protected health information” under Section 13402(h)(1) of the HITECH Act.

2. **HITECH Act Provisions.** PhDx will comply with the following rights, powers, duties, and obligations:

(a) PHDX shall report to Covered Entity any Breach of Unsecured PHI that it becomes aware of as required under the HITECH Act. The report shall include the name of each individual whose Unsecured PHI has been, or is reasonably believed by PHDX to have been, accessed, acquired or disclosed as a result of such Breach. Such reports shall be submitted within five (5) business days of when PHDX becomes aware of such Breach and shall contain such information as PHDX reasonably believes is required for Covered Entity to further investigate. PHDX shall also provide such assistance and further information as reasonably requested by Covered Entity.

(b) As required by Section 13401(a) of the HITECH Act, the following sections of the HIPAA Regulations shall also apply to PHDX in its capacity as a Business Associate: (1) 45 CFR 164.308 (Administrative Safeguards); (2) 45 CFR 164.310 (Physical Safeguards); (3) 45 CFR 164.312 (Technical Safeguards); and, (4) 45 CFR 164.316 (Policies and Procedures and Documentation Requirements).

(c) As required by Section 13404 of the HITECH Act: (1) PHDX may use and disclose PHI that it obtains or creates under any Business Associate Agreement between the parties only if such use or disclosure, respectively, is in compliance with each applicable provision of 42 CFR § 164.512(e); and (2) if PHDX knows of a pattern of activity or practice that constitutes a material breach of the Business Associate Agreement between the parties by Covered Entity or violation by Covered Entity of the standards of 45 CFR § 164.502(e) or 45 CFR § 164.504(e) with respect to any Business Associate Agreement between the parties, PHDX shall notify Covered Entity of such material breach or violation by Covered Entity and unless Covered Entity takes reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, PHDX shall either: (A) terminate the contract or arrangement; or (B) if termination is not feasible, report the problem to the Secretary.

(d) As required by Section 13405(d)(1) of the HITECH Act, and unless approved by Covered Entity consistent with the exceptions set forth in Section 13405(d)(2) of the HITECH Act, PHDX shall not directly or indirectly receive remuneration in exchange for any PHI of an individual unless Covered Entity has obtained from the individual a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual.

(e) As defined by Section 13406(a) of the HITECH Act and 45 CFR 164.508, and unless approved by Covered Entity, PHDX shall not directly or indirectly perform marketing to Covered Entity patients using PHI that was either provided by Covered Entity, or created or otherwise acquired by PHDX on behalf of Covered Entity.

(f) As provided for in Section 13411 of the HITECH Act, PHDX shall be subject to audits by the Secretary to ensure PHDX compliance with the HITECH Act as well as 45 CFR 164 subparts C and E.

(g) PHDX 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 CFR 164.528 and Section 13405(c) of the HITECH Act. PHDX further agrees to provide Covered Entity or an individual, as applicable, in a time and manner as prescribed by the HIPAA Regulations and the HITECH Act, such information collected in accordance with this subsection in response to a request for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528 or the HITECH Act. Such time and manner shall comply with the obligations under the HIPAA Regulations or the HITECH Act.

(h) PHDX will limit its requests for, use and disclosure of PHI to the minimum necessary to accomplish the intended purpose of the applicable request, use or disclosure.

(i) To the extent not incorporated or referenced in any Business Associate Agreement, PhDx will comply with all other requirements applicable to PHDX under the HITECH Act.

PhDx Systems, Inc.