

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("BA Agreement") is effective as of the Effective Date by and between _____ ("Covered Entity") and Management & Medical Consulting Services, LLC ("Business Associate").

WHEREAS, Covered Entity has determined that it is a covered entity under the Privacy Rules and Security Rules or has components covered by the Privacy Rules and Security Rules; and

WHEREAS, Covered Entity and Business Associate are parties to the Agreement, pursuant to which Business Associate provides certain goods and/or services to Covered Entity, and, in connection with those goods and/or services, Business Associate has access to PHI that is subject to protection under the Privacy Rules, Security Rules and the HITECH Act.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements set forth herein, the parties, intending to be legally bound, agree as follows:

Section 1. Definitions. The terms used, but otherwise not defined, in this BA Agreement shall have the same meaning as those terms in the Privacy Rules, Security Rules and the HITECH Act.

(a) "Agreement" shall mean that certain Promoting Interoperability Technical Assistance Agreement between Covered Entity and the Business Associate dated _____, 20__.

(b) "Breach" shall have the meaning set forth in the HITECH Act, including, without limitation, the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security and/or privacy of such Protected Health Information.

(c) "Designated Record Set" shall have the meaning set forth in 45 CFR § 164.501, including, without limitation, a group of records maintained by or for Covered Entity that are: (i) the medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Covered Entity to make decisions about individuals. For purposes of this definition, the term "record" means any item, collection or grouping of information that includes

Protected Health Information and is maintained, collected, used or disseminated by or for Covered Entity.

(d) "Effective Date" shall mean the effective date of the Agreement.

(e) "HITECH Act" shall mean the provisions applicable to business associates under Subtitle D of the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, including any implementing regulations, as may be amended, modified or superseded, from time to time.

(f) "Individual" shall have the meaning set forth in 45 CFR § 160.103, including, without limitation, a person who is the subject of Protected Health Information, and shall include an individual or entity who qualifies as a personal, legal representative of the person, as the context requires.

(g) "PHI" shall mean Protected Health Information which Business Associate receives from, or creates or receives for, or on behalf of, Covered Entity in connection with the performance of goods and/or services pursuant to the Agreement.

(h) "Privacy Rules" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, as may be amended, modified or superseded, from time to time.

(i) "Protected Health Information" shall have the meaning set forth in 45 CFR § 160.103, including, without limitation, any information, whether oral, electronic or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; (ii) the provision of health care to an individual; or (iii) the past, present or future payment for the provision of health care to an individual; and (iv) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(j) "Required by Law" shall have the meaning set forth in 45 CFR § 164.103, including, without limitation, a mandate contained in law that compels Covered Entity or Business Associate to make a use or disclosure of Protected Health Information and that is enforceable in a court of law.

(k) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his/her designee.

(l) "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(m) "Security Rules" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160, 162 and 164, as may be amended, modified or superseded from time to time.

(n) "Unsecured PHI" shall have the meaning set forth in the HITECH Act, including, without limitation, Protected Health Information not secured through the use of encryption, destruction or other technologies and methodologies identified by the Secretary to render such information unusable, unreadable, or indecipherable to unauthorized individuals.

Section 2. Obligations of Business Associate.

(a) Permitted Uses. Business Associate shall not use PHI in any manner except for the purpose of permitting Business Associate to provide goods and/or services pursuant to the Agreement; provided, however, that Business Associate shall not use PHI in any manner that would constitute a violation of the HITECH Act, Privacy Rules or Security Rules if so used by Covered Entity. Notwithstanding, Business Associate may use PHI: (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) as Required by Law.

(b) Permitted Disclosures. Business Associate shall not disclose PHI in any manner except for the purpose of permitting Business Associate to provide goods and/or services pursuant to the Agreement; provided, however, that Business Associate shall not disclose PHI in any manner that would constitute a violation of the HITECH Act, Privacy Rules or Security Rules if so disclosed by Covered Entity. Notwithstanding, Business Associate may disclose PHI: (i) for the proper management and administration of Business Associate if such disclosure is Required by Law or if "Reasonable Assurances" are obtained; (ii) to carry out the legal responsibilities of Business Associate if such disclosure is Required by Law or if "Reasonable Assurances" are obtained; or (iii) as Required by Law. To the extent that Business Associate discloses PHI to a third party pursuant to Section 2(b)(i) or (ii) above under Reasonable Assurances, Business Associate must obtain in writing, prior to making any such disclosure: (x) reasonable assurance from the third party that such PHI will be held in a confidential manner; (y) reasonable assurance from the third party that such PHI will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to such third party; and (z) an agreement from the third party to immediately notify Business Associate of any breaches of confidentiality of such PHI, to the extent the

third party has obtained knowledge of such breach (collectively, "Reasonable Assurances").

(c) Appropriate Safeguards. Business Associate shall implement appropriate administrative, technical, physical, and security safeguards in compliance with the Privacy Rules, Security Rules and the HITECH Act that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. As required by law, Business Associate shall maintain policies, procedures and documentation that address these safeguards and which are appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its services.

(d) Business Associate's Subcontractors and/or Agents. To the extent Business Associate uses one or more subcontractors or agents to provide goods and/or services pursuant to the Agreement, and such subcontractors or agents receive or have access to PHI, Business Associate shall require that each subcontractor or agent agree in writing to be bound by the terms of this BA Agreement to the same extent as Business Associate.

(e) Access to PHI. Within ten (10) days of receipt of a request by Covered Entity, Business Associate shall make PHI maintained by Business Associate in a Designated Record Set available to Covered Entity for inspection and/or copying to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524 and the HITECH Act. If a request for access to PHI is delivered directly to Business Associate, Business Associate shall as soon as possible, but no later than ten (10) days after receipt of the request, forward the request to Covered Entity.

(f) Amendment of PHI. Within ten (10) days of receipt of a request by Covered Entity, Business Associate shall amend PHI maintained by Business Associate in a Designated Record Set as directed by Covered Entity to enable Covered Entity to fulfill its obligations under 45 CFR § 164.526. If a request for amendment of PHI is delivered directly to Business Associate, Business Associate shall as soon as possible, but no later than ten (10) days after receipt of the request, forward the request to Covered Entity.

(g) Accounting of PHI Disclosures. Business Associate agrees to document 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 Protected Health Information in accordance with 45 CFR § 164.528 and the HITECH Act. Within ten (10) days of receipt of a request by Covered Entity, Business Associate shall make available to Covered Entity the information required to provide an accounting of such disclosures. Any accounting information shall include

the information described in 45 CFR § 164.528(b), including, without limitation: (i) the date of disclosure of PHI; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the written request for disclosure. If a request for an accounting of PHI is delivered directly to Business Associate, Business Associate shall as soon as possible, but no later than ten (10) days after receipt of the request, forward the request to Covered Entity.

(h) Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary in a time and manner designated by the Secretary for the purpose of the Secretary determining Covered Entity's compliance with the Privacy Rules, Security Rules and/or the HITECH Act. Unless the Secretary directs otherwise, Business Associate shall notify Covered Entity of Business Associate's receipt of such request.

(i) Minimum Necessary Use and Disclosure Requirement. Business Associate shall only request, use and disclose the minimum amount of PHI necessary to reasonably accomplish the purpose of the request, use or disclosure in accordance with the Privacy Rules and the HITECH Act. Further, Business Associate will restrict access to PHI to those employees of Business Associate who are actively and directly participating in providing goods and/or services pursuant to the Agreement and who need to know such PHI in order to fulfill such responsibilities.

(j) Retention of PHI. Business Associate shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under Section 2(g) of this BA Agreement for a period of six (6) years from its creation.

(k) Notification Obligations; Mitigation. During the term of this BA Agreement, Business Associate shall notify Covered Entity within ten (10) calendar days after discovery of a Breach of Unsecured PHI or any material Security Incident of which it becomes aware. This notification obligation shall include, but shall not be limited to, providing Covered Entity with the following information, if known: (i) a description of the facts and circumstances concerning the Breach or Security Incident; (ii) a description of the PHI affected; and (iii) the names and identity of the Individual(s) affected. Business Associate shall be deemed to discover a Breach of Unsecured PHI as of the first day on which such Breach is known, or should have been known, by Business Associate.

(l) Additional Obligations. Business Associate shall comply with the requirements of the HITECH Act, which are applicable to business associates, including all regulations which are issued to implement such requirements, as may be amended, modified or superseded from time to time.

(m) Compliance with Standard Transactions. If Business Associate conducts, in whole or in part, Standard Transactions (as such term is defined in the Standards for Electronic Transactions Rule at 45 CFR Parts 160 and 162, as may be amended, modified or superceded, from time to time) for or on behalf of Covered Entity, Business Associate will comply, and will require any of its subcontractors or agents involved with such Standard Transactions on behalf of Covered Entity to comply, with each applicable requirement of 45 CFR Parts 160 and 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in a Standard Transaction or are not in the Standard Transactions' implementation specification; or (iv) changes the meaning or intent of the Standard Transactions' implementation specifications.

Section 3. Obligations of Covered Entity.

(a) Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.

(b) Restrictions on Use or Disclosure. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individuals to use and/or disclose PHI, to the extent such changes or revocations may affect Business Associate's permitted or required uses and/or disclosures of PHI. Further, Covered Entity shall notify Business Associate of any restriction to the use and/or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522 and the HITECH Act, to the extent such restriction may affect Business Associate's permitted or required uses and/or disclosures of PHI.

Section 4. Term and Termination.

(a) Term. This BA Agreement shall commence on the Effective Date and will remain effective for the entire term of the Agreement.

(b) For Cause Termination Due to Material Breach. Either party may terminate this BA Agreement by notice in writing to the other party, if the other party materially breaches this BA Agreement in any manner and such material breach continues for a period of thirty (30) days after written notice is given to the breaching party by the other party specifying the nature of the breach and requesting that it be cured. A material breach of this BA Agreement shall constitute a breach of the Agreement. If termination of this BA Agreement is not feasible, the non-breaching party shall report the breach to the Secretary.

(c) Effect of Termination. Upon termination of this BA Agreement, Business Associate shall return or destroy all PHI (regardless of form or medium), including all copies thereof and any data compilations derived from PHI and allowing identification of any individual who is the subject of the PHI. The obligation to return or destroy all PHI shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. If the return or destruction of PHI is not feasible, Business Associate shall provide Covered Entity written notification of the conditions that make return or destruction not feasible. Upon notification that return or destruction of PHI is not feasible, Business Associate shall continue to extend the protections of this BA Agreement to such information and limit further uses or disclosures of such PHI to those purposes that make the return or destruction of such PHI not feasible, for as long as Business Associate maintains such PHI. If Business Associate elects to destroy the PHI, Business Associate shall notify Covered Entity in writing that such PHI has been destroyed.

Section 5. Construction. This BA Agreement shall be construed as broadly as necessary to implement and comply with the Privacy Rules, Security Rules and the HITECH Act. The parties agree that any ambiguity in this BA Agreement shall be resolved in favor of a meaning that complies and is consistent with the Privacy Rules, Security Rules and the HITECH Act.

Section 6. Captions. The captions contained in this BA Agreement are included only for convenience of reference and do not define, limit, explain or modify this BA Agreement or its interpretation, construction or meaning and are in no way to be construed as part of this BA Agreement.

Section 7. Notice. All notices and other communications required or permitted pursuant to this BA Agreement shall be in writing, addressed to the party at the address set forth at the end of this BA Agreement, or to such other address as any party may designate from time to time in writing in accordance with this Section. All notices and other communications shall be sent by: (i) registered or certified mail, return receipt requested, postage pre-paid; (ii) facsimile with a copy sent by First Class Mail, postage pre-

paid; or (iii) hand delivery. All notices shall be effective as of the date of delivery if by hand delivery, two (2) days following the date of facsimile, or if by certified mail on the date of receipt, whichever is applicable.

Section 8. Assignment. This BA Agreement and the rights and obligations hereunder shall not be assigned, delegated, or otherwise transferred by either party without the prior written consent of the other party and any assignment or transfer without proper consent shall be null and void.

Section 9. Governing Law and Venue. This BA Agreement shall be governed by, and interpreted in accordance with, the Privacy Rules, Security Rules, the HITECH Act and the internal laws of the State of Alabama, without giving effect to any conflict of laws provisions.

Section 10. Binding Effect; Modification. This BA Agreement shall be binding upon, and shall enure to the benefit of, the parties hereto and their respective permitted successors and assigns. This BA Agreement may only be amended or modified by mutual written agreement of the parties; provided, however, that in the event provisions of this BA Agreement shall conflict with the requirements of the Privacy Rules, Security Rules or the HITECH Act, this BA Agreement shall automatically be deemed amended as necessary to conform to such legal requirements at all times.

Section 11. Waiver. The failure of either party at any time to enforce any right or remedy available hereunder with respect to any breach or failure shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

Section 12. Severability. In the event that any provision or part of this BA Agreement is found to be totally or partially invalid, illegal, or unenforceable, then the provision will be deemed to be modified or restricted to the extent and in the manner necessary to make it valid, legal, or enforceable, or it will be excised without affecting any other provision of this BA Agreement, with the parties agreeing that the remaining provisions are to be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

Section 13. No Third-Party Beneficiaries. Nothing express or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than Covered Entity, Business Associate and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

Section 14. Counterparts. This BA Agreement may be executed in multiple counterparts, each of which shall

constitute an original and all of which together shall constitute but one BA Agreement.

respect to the matters contemplated herein and supersedes all previous and contemporaneous oral and written negotiations, commitments, and understandings relating thereto.

Section 15. Entire Agreement. This BA Agreement constitutes the entire agreement between the parties with

IN WITNESS WHEREOF, Covered Entity and Business Associate have each caused this BA Agreement to be executed in their respective names by their duly authorized representatives as of the Effective Date.

BUSINESS ASSOCIATE:

COVERED ENTITY:

Management & Medical Consulting Services, LLC

Clinic Legal Name

Signature: _____

Signature: _____

Print Name/Title: Mike Bice, Project Director

Print Name/Title: _____

Address: 33637 U. S. Hwy 280 E, Suite C
Childersburg, AL 35044

Address: _____

Telephone: 256-346-3611
Facsimile: 256-346-3472

Telephone: _____
Facsimile: _____

Contact Person: Sheryl Lemons

Contact Person: _____

Email: _____