

CITY OF MARIANNA
COMMISSION AGENDA MEMO
April 2, 2019

ITEM# _____

MARIANNA HEALTH & REHABILITATION CENTER
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- Subject:** Billing Services Agreement for Marianna Health & Rehabilitation Center.
- Subject Background:** The Commission advertised for request for proposals for billing services. Proposals were reviewed by the committee established by the Commission and it was recommended the proposal from Health Care Professional Consulting Services, Inc. for billing services for Marianna Health & Rehabilitation Center be approved.
- Detail:** The contract for billing services has been reviewed by the City Attorney and the City Manager.
- Recommendation:** Approve the Billing Services Agreement with Health Care Professional Consulting Services, Inc. for Marianna Health and Rehabilitation Center.
- Potential Motion:** I move to approve the Billing Services Agreement from Health Care Professional Consulting Services, Inc. for billing services for Marianna Health and Rehabilitation Center per recommendation of the Administrator and the Board of Trustees of MHRC.

Prepared by: Melinda Gay, Administrator	Approved for Agenda by:
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CONSULTING AGREEMENT

This Agreement (the "Agreement") is made and entered into this ___ day of April 2019, by and between **Marianna Health and Rehabilitation Center (MHRC)** ("Company"), which operates the Skilled Nursing Facility ("Facility") and **Health Care Professional Consulting Services, Inc D.B.A. HCPCS, Inc.** ("Consultant"). The parties may be referred to herein collectively as "the parties" and singularly as a "party."

RECITALS:

WHEREAS, Consultant is an independent contractor providing professional health care financial services; and

WHEREAS, Company is engaged in the business of furnishing skilled nursing, assisted living, and independent living continuum of care and is located at **4295 5th Avenue, Marianna, FL, 32446**; and

WHEREAS, Company wishes to acquire the services of Consultant to provide skilled nursing facility financial billing and consulting services for the Company/Facility in accordance with applicable state and federal laws; and

WHEREAS, Consultant has agreed to provide such services to the Company in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the parties, intending to be legally bound, agree as follows:

I. DUTIES AND OBLIGATIONS OF CONSULTANT

A. **Services.** Under the terms and subject to the conditions set forth herein, Company hereby agrees to engage Consultant to provide Financial Consulting Services to the Company and Company hereby accepts this engagement by Consultant and the terms and subject to the conditions described in this Agreement.

B. **Duties of Consultant.** Consultant shall:

1. Complete billing and duties associated with Medicare Part A & B, Medicaid and co-insurance accounts receivable billing, analysis, resolution and collections of outstanding accounts, and other administrative matters pertaining to the billing and reimbursement requirements. Assist with all duties associated with other accounts receivable payers related to training, billing, analysis, resolution and collections as required, identified and agreed upon.
2. Provide support and training related to PointClickCare software configuration, payer setup, and other best practices. This includes communication and business process re-engineering considerations and to

assist in the development and refinement of policies and procedures for the financial operations, as may be necessary and agreed upon.

3. Provide training, collections support and supplemental materials related to billing and reimbursement guidelines. Consultant shall use its best efforts to ensure that training provided is accurate and represents the law and its interpretation at the time of the information and that in the course of providing support Consultant shall bring to the attention of Facility any significant errors it observes being made by its employees. Consultant is not responsible for any error it does not observe or is not brought to its attention.
4. Assist with overall revenue cycle management and PointClickCare support.
5. Recommendations for compliance protocols, resources or training associated with the reimbursement changes related to Medicare Patient Driven Payment Model, other Medicaid Managed Care and Prospective Payment System matters and Medicare Advantage Managed Care or other business system or financial operation support as may be requested and agreed upon.
6. Provide training, collections support and supplemental materials related to billing and reimbursement guidelines as requested and agreed upon.
7. Comply with all applicable federal, state and local rules, regulations and standards as set forth by any organization(s) regulating the provision of Medicare and Medicaid services.
8. Other support services as requested and agreed upon.

C. Hours. Consultant(s) shall make itself available to consult both remotely and onsite to the Company as needed which is anticipated to be limited in nature. If support services are deemed to be outside of the scope of the duties listed above and within the accepted proposal a separate proposal or addendum will be provided.

D. HIPAA Obligations. Consultant acknowledges that its employees and agents may have access to Protected Health Information ("PHI"), including electronic PHI as a Business Associate of Company as defined in the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, and accordingly agrees to enter into a Business Associate Agreement with Company as set forth in Attachment II.

II. DUTIES AND OBLIGATIONS OF THE COMPANY

A. Policies and Procedures. The Company/Facility shall provide written policies and procedures for accounting, and shall comply in all material respects with applicable state and federal

laws and regulations governing the provision of long-term care services.

B. Responsibility for Services Performed. The Company/Facility shall retain professional and administrative responsibility for all services provided under this Agreement.

C. Privacy Notice. Company/Facility shall provide Consultant with the notice of information practices that Company/Facility produces in accordance with 45 CFR §§ 164.520, as well as any subsequent changes to the notice of privacy practices.

D. Changes in Access by Individual. Company/Facility shall provide Consultant with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Consultant's permitted or required uses and disclosures.

E. Restrictions on Use and Disclosure of PHI. Company/Facility shall notify Consultant of any restrictions on the use and disclosure of PHI that Company has agreed to in accordance with 45 CFR §§ 164.522.

III. PAYMENT FOR SERVICES

A. Fees. The Company agrees to pay for the Consultant's time for the provision of services hereunder at the rate stated within the attached Fee Schedule in Exhibit A. Fee Schedule will be reviewed and may be adjusted on an annual basis.

B. Invoices. The Consultant shall submit weekly invoices to the Company appropriately detailing the hours of service and record of services rendered. The Company shall remit payment within 20 days of receipt of the invoice. The obligation to pay Consultant for hours worked and services rendered shall survive the termination of this Agreement.

IV. INDEPENDENT CONTRACTOR STATUS

None of the provisions of this Agreement are intended to create (nor shall be deemed or construed to create) any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective officers, directors, employees or agents, shall have authority to bind the other or shall be deemed or construed to be the agent, employee or representative of the other, except as may be specifically provided herein. Neither party, nor any employees or agents thereof, shall have any claim under this Agreement or otherwise against the other party for social security benefits, workers' compensation, disability benefits, unemployment insurance, vacation, sick pay or any other employee benefits of any kind.

V. EQUAL OPPORTUNITY

This Agreement shall be carried out in a nondiscriminatory manner without regard to race, creed, color, ancestry, national origin, religion, sex, age or handicap.

VI. TERM; TERMINATION

This Agreement shall commence as of the date first set forth above and shall continue in full force and effect for an initial term of one year, thereafter, this Agreement may be renewed for a one (1) year term and annually thereafter by mutual written or verbal agreement. This Agreement may be terminated with or without cause by either the Consultant or the Company with 20-day prior written notice, whereupon this Agreement shall terminate in accordance with any such notice.

In addition, Company may terminate this Agreement immediately upon written notice to Consultant if Consultant materially breaches any obligation pertaining to the confidentiality of PHI or obligations arising under HIPAA. In its sole discretion, Company may permit Consultant the opportunity to cure or take substantial steps to cure such material breach to Company's satisfaction within 30 days after receipt of such written notice from Company.

Notwithstanding the foregoing, in the event that the Company/Facility shall discontinue operations, or unless the parties make other arrangements, this Agreement shall cease to terminate as of the last day of the month in which Company/Facility ceases to operate.

VII. INDEMNIFICATION

A. The parties agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of each other's workforce (collectively referred to as the "Indemnified Party"), against all costs suffered by the Indemnified Party, including but not limited to any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees), arising from or in connection with a material breach of the Indemnifying Party's obligations set forth under this Agreement. This provision shall survive the expiration or termination of this Agreement. The foregoing notwithstanding nothing in this Agreement shall waive the Company/Facility's protections and limits of liability of Florida Statute 768.28

VIII. COMPLIANCE WITH PATIENT PROTECTION AND OTHER LAWS

The Consultant and the Company shall each comply with all applicable federal, state, and local laws, regulations and policies with respect to the rendering of services in nursing or convalescent homes and the protection of the rights of patients, including, but not limited to, rights relative to confidentiality, privacy, consumer protection, and the like. In the event of any complaint filed by or with respect to a patient in the Company/Facility or any investigation initiated by any governmental agency or any litigation commenced against the Company/Facility, the Consultant shall fully cooperate with the Company/Facility in an effort to respond to and resolve the same in a timely and effective manner. The Consultant shall also cooperate fully with any insurance company providing protection to the Company/Facility in connection with investigations. In this connection, the Consultant agrees that he or she shall promptly notify the Company/Facility of any inquiries, claims and investigations and cooperate fully with the directions of the Company/Facility with

respect thereto, or as required by law.

IX. RECORD RETENTION

The City of Marianna owns and operates the Marianna Health and Rehab Center.

Effective July 1, 2013, the Florida Legislature enacted §119.0701. This statute requires that all contractors who provide governmental services shall comply with Florida's public record laws with respect to services performed on behalf of the City of Marianna. Specifically, the statute requires that contractors:

- i. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- ii. Provide the public with access to public records on the same terms and conditions that a public agency would provide the records and at a cost that does not exceed the cost provided by Chapter 119 of the Florida Statutes or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- iv. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to City of Marianna in a format that is compatible with the information technology systems of City of Marianna.

The failure of the Contractor to comply with the provisions set forth in this Article, if applicable, shall constitute a default and material breach of this Agreement, which may result in immediate termination, with no penalty to City of Marianna.

The Parties further acknowledge that the City of Marianna is a political subdivision of the State of Florida and subject to the State of Florida's public record laws. Should a request be made for disclosure of confidential records of the other party, City of Marianna shall provide notice to the other party who may then, at its discretion, respond to the request. Should the other party not disclose the records/documents, the other party shall defend and indemnify the City of Marianna for any fees and costs which are incurred or taxed against the City of Marianna as a result of the non-disclosure.

X. RESTRICTIVE COVENANTS; CONFIDENTIALITY

A. Consultant. Consultant agrees that, during and after the termination of this Agreement that Consultant shall:

1. Confidentiality. Except as may be required in fulfillment of Consultant's

duties and responsibilities, or as otherwise permitted under this Agreement, Consultant shall not divulge, furnish or make accessible to anyone any trade secrets, customer lists, computer programs or confidential information of any kind with respect to the customers or business operations of Company/Facility, including, but not limited to, the names and addresses of any patients or suppliers, or information regarding the sales and marketing of Company/Facility.

2. Return of Information. Upon termination of this Agreement for any reason whatsoever, either with or without cause, Consultant shall return to Company/Facility all account books, reports, books, records, lists, manuals, correspondence, computer programs or other computer storage mediums in any form, papers, petty cash, checks, credit cards, patient and client lists, lists or resumes of personnel and other written, typed, printed or reproduced materials in whatever form or medium, within his/her possession, custody or control, whether furnished by Company/Facility or prepared by Consultant, which contain any information relating to Company's/Facility's business. In addition, upon termination, if feasible, Consultant shall return or destroy all PHI received from, or created or received by Consultant on behalf of Company/Facility, that Consultant still maintains in any form, in accordance with the Business Associate Agreement set forth in Attachment II.

B. Company/Facility. Company/Facility agrees that, during and after the termination of this Agreement that Company/Facility:

1. Confidentiality. Except as may be required in fulfillment of Company's/Facility's duties and responsibilities under this Agreement, neither shall divulge, furnish or make accessible to anyone any trade secrets, customer lists, computer programs or confidential information of any kind with respect to the customers or business operations of Consultant, including, but not limited to, the names and addresses of any patients or information regarding the sales and marketing of Consultant.

2. Return of Information. Upon termination of this Agreement for any reason whatsoever, either with or without cause, Company/Facility shall return to Consultant upon written request all lists, manuals, correspondence, computer programs or other computer storage mediums in any form, papers, petty cash, checks, credit cards, lists or resumes of personnel and other written, typed, printed or reproduced materials in whatever form or medium, within its possession, custody or control, which contain any information relating to Consultant's business.

C. Survival. The parties agree that the provisions of this Section X shall survive termination of this Agreement.

D. HIPAA. The parties further agree that the obligations set forth in this Section X shall be in addition to the parties' obligations under HIPAA as set forth herein.

XI. ASSIGNMENT

This Agreement may not be assigned by either party, nor any rights claimed hereunder for

any other person or persons whatsoever. Notwithstanding the mutual non-assignability of this Agreement, Company may assign this Agreement to an affiliate. For purposes of this Section XII, an "affiliate" shall mean an entity related to Company by common ownership or control.

XII. NON-EXCLUSIVITY

It is understood and acknowledged by the parties that this Agreement in no way restricts the parties' right, which is hereby reserved, to enter into similar agreements, either during the term of the Agreement or subsequent thereto.

XIII. MISCELLANEOUS

A. **Entire Agreement.** This Agreement contains the entire understanding between the Consultant and the Company and supersedes all prior and contemporaneous agreements and understandings, expressed or implied, oral or written. This Agreement may be modified or altered only by written agreement between the Consultant and the Company.

B. **Controlling Law.** This Agreement shall be governed exclusively by the laws of the State of Florida. If a provision hereof or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder hereof, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and be enforced to the fullest extent permitted by law, provided that the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of law. Any dispute between the parties shall be resolved without the aid of jury (a non-jury trial) by a Judge of the 14th Judicial Circuit sitting in Marianna, Florida.

C. **Notices.** Any notices required under this Agreement shall be in writing and shall be deemed to have been given if: (i) sent by certified or registered mail, return receipt requested, with adequate postage; or (ii) sent by means of an express delivery service if it obtains a receipt to confirm delivery set forth below:

If to Consultant: Julie Ann Kemman
HCPCS, Inc
4007 Baldwin Drive
Sebastian, FL 32976
(561) 262-7534
(772) 664-1333 fax

If to Company: Marianna Health and Rehabilitation Center
4295 5th Avenue
Marianna, FL 32446
(850) 482-8091
Attn: Melinda Gay, Administrator

D. Amendment to Comply with Law. The parties acknowledge that it may be necessary to amend this Agreement to comply with modifications to HIPAA, including but not limited to statutory or regulatory modifications or interpretations by a regulatory Center or court of competent jurisdiction. No later than sixty (60) days after the effective date of any such modifications, the parties agree to use good faith efforts to develop and execute any amendments to this Agreement as may be required for compliance with HIPAA.

E. Amendments. This Agreement may be amended or modified only in writing signed by the parties hereto.

F. No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Company, Center or Consultant and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

G. Paragraph Headings. The paragraph headings in this Agreement are for convenience only. They form no part of this Agreement and shall not affect its interpretation.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the date first set forth above.

**HEALTH CARE PROFESSIONAL
CONSULTING SERVICES, INC**

Julie Ann Kemman
Name

By: _____
Signature

**MARIANNA HEALTH AND
REHABILITATION CENTER**

Name

By: _____
Signature

Title: _____

EXHIBIT A

FEE SCHEDULE AND HOURS

The Company shall pay the Consultant at the rate set forth below. The Consultant will provide an itemized invoice for services on a weekly basis payable within 20 days of receipt. In addition, a detailed Log of Services will be provided to document consulting time and brief narrative of services provided.

Consultant will be paid an hourly rate of \$85.00 for both remote and onsite support services.

Mileage rate will be reimbursed for onsite services as published by the Internal Revenue Service (IRS).

If requested by Company, Consultant shall be paid a lump sum fee in the amount of \$2000.00 for draft framework of policy and procedure library related to standardized billing, collections, and other financial related documents that appear on the table of contents. The Company will be then revise or edit for Company's operations and preferences by their internal designees, the cost of which policies and procedures shall be invoiced by Consultant following delivery thereof to Company.

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is effective this ___ day of April, 2019 (“Effective Date”) by and between Marianna Health and Rehabilitation Center (“Covered Entity”), and Health Care Professional Consulting Services, Inc. dba HCPCS (“Business Associate”).

RECITALS

WHEREAS, Covered Entity and Business Associate are parties to an agreement (the “Underlying Agreement” as defined below), pursuant to which Business Associate provides certain services to Covered Entity and, in connection with those services, Covered Entity discloses to Business Associate certain individually identifiable Protected Health Information (“PHI” as defined below) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented from time to time (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), the HIPAA Final Omnibus Rule and any regulations promulgated thereunder (collectively the “HIPAA Rules”); and

WHEREAS, the parties desire to comply with the HIPAA and HITECH standards for the privacy and security of PHI of Covered Entity’s patients.

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained. Covered Entity and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

ARTICLE 1

DEFINITIONS

- 1.1 **Generally.** Unless otherwise provided herein, capitalized terms shall have the same meaning as set forth in the HIPAA regulations, 45 C.F.R. parts 160, 162 and 164.
 - 1.2 **Breach.** “Breach “ shall mean the unauthorized acquisition, access, use, or disclosure of protected health information that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.
 - 1.3 **Designated Record Set.** “Designated Record Set” shall mean a group of medical records maintained by or for a covered entity that is: (i) The medical record and billing records about individuals maintained by or for a covered health provider, (ii) The enrollment, payment, claims adjudication, and case management record systems maintained by or for a health plan; or (iii) Used in whole or part, by or for the covered entity to make decisions about individuals. For the purposes of this paragraph, 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 a covered entity.
 - 1.4 **Disclosure.** “Disclosure” shall mean the release, transfer, provision of, access to, or divulging in any other manner of the information outside the entity holding the information.
 - 1.5 **Electronic Protected Health Information (ePHI).** Electronic Protected Health Information (ePHI) shall have the same meaning as the term Electronic Protected Health Information (ePHI) in 45 C.F.R. 164.103.
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- 1.6 **Individual.** “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- 1.7 **Privacy Rule.** “Privacy Rule” shall mean the privacy provisions of the Standards for Privacy and Security of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- 1.8 **Protected Health Information or PHI.** The term “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.9 **Required by Law.** “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. 164.103.
- 1.10 **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services, or his/her designee.
- 1.11 **Security Incident.** “Security Incident” shall have the same meaning as the term “Security Incident” in 45 C.F.R. 164.304.
- 1.12 **Standard for Privacy and Security.** “Standards for Privacy and Security” shall mean the provisions of the Standards for Privacy and Security of Individually Identifiable Health Information as 45 C.F.R. part 160 and part 164, subparts A and E.
- 1.13 **Underlying Agreement.** Pursuant to an arrangement between Parties, Business Associate provides services (the “Services”) to Covered Entity that involve the use and disclose of PHI. Business Associate agrees to use and disclose PHI only as authorized by the Agreement.
- 1.14 **Use.** With respect to individually identifiable health information, “Use” shall mean the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

ARTICLE 2

SCOPE OF USE OF PHI

- 2.1 **Performance of Agreement.** Business Associate, its employees, agents and independent contractors (collectively referred to as “Business Associate”) may use PHI solely (1) to perform its duties under the Underlying Agreement, (2) as directed by Covered Entity, (3) as allowed by the terms of the Underlying Agreement and this Agreement, and (4) as required by law. All other uses or disclosures not authorized by this Agreement or required by law are prohibited.
- 2.2 **Safeguards for Protection of PHI.** Business Associate agrees that it will:
- (a) use commercially reasonable efforts to protect and safeguard from any oral and written disclosure all PHI and ePHI, regardless of the type of media on which it is stored (e.g., written or electronic, etc.), with which it may come into contact in accordance with applicable statutes and regulations, including, but not limited to, HIPAA and the HITECH Act;

- (b) implement and maintain administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of the PHI and ePHI that Business Associate creates, receives, maintains or transmits;
- (c) use appropriate safeguards to prevent use or disclosure of PHI and ePHI other than as permitted by this Agreement or required by law;
- (d) comply, where applicable, to the Security Rule with regard to ePHI; and
- (e) to the extent that Business Associate is to carry out any of Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule applicable to Covered Entity in the performance of such obligations.

2.3 **Reporting of Unauthorized Use.** Business Associate shall promptly report to Covered Entity, in writing, within fifteen (15) days of discovery, any unauthorized acquisition, access, use or disclosure of PHI in violation of this Agreement or any law, or any Security Incident ("the Breach"). Such written notice to Covered Entity shall include the identity of each individual whose PHI was, or was reasonably believed to have been, breached; a brief description of what happened, including the date of the Breach and date of discovery of the Breach; a description of the PHI that was involved in the Breach; any steps the individual(s) should take to protect themselves from potential harm from the Breach; a description of what Business Associate is doing to investigate the breach, mitigate harm to the individual(s) and protect against further Breaches; and contact procedures for individual(s) to ask questions or get additional information. Business Associate shall implement and maintain sanctions against any employee, subcontractor or agent who violates the requirements of the Agreement or the HIPAA or HITECH Act regulations. Business Associate shall, as requested by Covered Entity, take steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.4 **Use of Subcontractors.** To the extent Business Associate uses one or more subcontractors or agents to provide services under the Underlying Agreement, and such subcontractors or agents receive or have access to PHI, Business Associate agrees that it will ensure that each such subcontractor or agent shall agree to substantially the same restrictions, terms and conditions that apply to Business Associate in this Agreement, including but not limited to implementation of reasonable and appropriate safeguards to protect PHI.

In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.

2.5 **Breach or Misuse of PHI.** Business Associate understands and agrees that any breach of confidentiality or misuse of information found in and obtained from PHI, may result in termination of the Underlying Agreement.

ARTICLE 3

AVAILABILITY, AMENDMENT OF PHI

3.1 **Availability of PHI.** Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in Designated Record Set, to

Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements of 45 C.F.R. 164.524.

- 3.2 **Amendments to PHI.** Business Associate agrees to make any amendment(s) to the PHI in a Designated Record Set that the Covered Entity directs and agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

ARTICLE 4

ACCOUNTING AND INSPECTIONS

- 4.1 **Accounting of Disclosures.** Business 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.
- 4.2 **Provide Accounting.** Business Associate agrees to provide to Covered Entity or an individual, in time and manner designated by Covered Entity, information collected in accordance with Section 4.1 of this Agreement, to permit 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.
- 4.3 **Access by DHHS.** Business Associate shall make its internal practices, books and records related to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of Health and Human Services or designee ("DHHS") for purposes of determining Covered Entity's compliance with HIPAA, the HITECH Act and the corresponding privacy and security regulations. Upon Covered Entity's request, Business Associate shall provide Covered Entity with copies of any information it has made available to DHHS under this section of the Agreement.

ARTICLE 5

OBLIGATIONS OF COVERED ENTITY

- 5.1 **Notice of Privacy Practices:** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes of such notices.
- 5.2 **Changes in Use of PHI:** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- 5.3 **Restrictions of Use of PHI.** Covered Entity shall notify Business Associate of any restrictions to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.

ARTICLE 6

TERM/TERMINATION

- 6.1 **Term and Termination.** This Agreement shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of

Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy the PHI or ePHI, protections are to extend to such information, in accordance with the provisions of this Agreement.

- 6.2 **Termination After Notice and Right to Cure.** If the Covered Entity reasonably determines that the Business Associate has committed a material breach of this Agreement, Business Associate shall have thirty (3) calendar days, after delivery from Covered Entity of written notice pursuant to Section 8.2 to remedy the breach and provide evidence of cure to the Covered Entity. If such material breach is not cured within that time, Covered Entity may terminate this Agreement or the Underlying Agreement without additional notice to Business Associate. For the purposes of this Agreement, material breach shall include, but not to be limited, improper use or disclosure of PHI or failure to implement protective safeguards or diminution of Business Associates' reported security procedures which are satisfactory to the Covered Entity, as determined by the Covered Entity in its sole discretion.
- 6.3 **Termination After Repeated Material Breach.** Covered Entity may terminate this Agreement and the Underlying Agreement without penalty if Business Associate commits repeated material breaches of this Agreement or any provision hereof, irrespective of whether, or how promptly, Business Associate may remedy such violation after being notified of the same. Repeated material breach means more than one material breach of this Agreement.
- 6.4 **Return and Destruction of PHI.** Within fifteen (15) business days of the expiration or earlier termination of this Agreement or Underlying Agreement for whatever reason, Business Associate agrees that it will return or destroy all PHI, if feasible, received from, or created or received by it or on behalf of Covered Entity, that Business Associate maintains in any form, and retain no copies of such information.
- 6.5 **No Feasible Return and Destruction of PHI.** To the extent such return or destruction of PHI is not feasible, Business Associate shall extend the precautions of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information unfeasible. Business Associate shall remain bound by the provisions of this Agreement, even after termination of this Agreement or the Underlying Agreement until such time as all PHI has been returned or otherwise destroyed as provided in this section.
- 6.6 **Effect of Termination.** All rights, duties and obligations of Business Associate established in this Agreement shall survive this termination of this Agreement.

ARTICLE 7

INDEMNIFICATIONS

- 7.1 Business Associate agrees to defend, indemnify, save, and hold Covered Entity and its employees, officers, and directors harmless from and against any and all liability, loss, damages, claims, actions, judgments, costs, fines, penalties or expenses, including, but not limited to, any award, settlement, or reasonable attorney's fees and costs, which arise out of acts or omissions to act by Business Associate or its employees, contractors or agents in connection with the performance of its duties and responsibilities pursuant to the terms of this Agreement.
- 7.2 In the event of the receipt by Business Associate of a written notice of claim or cause of action which is covered under the indemnification provisions contained in this Article 7, Business

Associate shall promptly advise the Covered Entity in writing of claim, but in any event in time for the Covered Entity to file a responsive pleading if a lawsuit has been commenced.

- 7.3 Notwithstanding anything contained in this Agreement to the contrary, Business Associate's obligations under this Article 7 shall survive this termination of this Agreement.

ARTICLE 8

OTHER PROVISIONS

- 8.1 **Construction.** This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and HITECH Act and the regulations promulgated thereunder. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Standards for Privacy and Security, HIPAA, the HITECH Act and any amendments thereto.
- 8.2 **Notice.** All Notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement, or to such other address as either party may designate from time to time. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, postage pre-paid, or transmitted by hand delivery or telegram. All notices shall be effective as of the date of delivery of personal notice or on the date of receipt, whichever is applicable.
- 8.3 **Amendments.** The parties recognize this Agreement may need to be modified from time to time to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to, HIPAA and the HITECH Act. This Agreement constitutes the entire agreement between the parties with respect to its subject matter. No oral statement or prior written material not specifically mentioned herein shall be of any force or effect and no change in or addition to this Agreement shall be recognized unless evidenced by a writing executed by Covered Entity and Business Associate, such amendment(s) to become effective on the date stipulated therein. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Standard for Privacy and Security, HIPAA, the HITECH Act and any amendments thereto. However, if the parties cannot agree on amendment, either party may terminate the Underlying Agreement on thirty (30) day written notice.
- 8.4 **Assignment.** Covered Entity has entered into this Agreement in specific reliance on the expertise and qualifications of Business Associate. Consequently, Business Associate's interest under this Agreement may not be transferred or assigned or assumed by any other person, in whole or part, without the prior written consent of Covered Entity.
- 8.5 **Governing Law.** This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and accordance with, the laws of the State of Florida.
- 8.6 **Heading.** Headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 8.7 **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

- 8.8 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute but one Agreement.
- 8.9 **Gender and Number.** The use of the masculine, feminine or neuter genders, and use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word “person” or “party” shall mean and include any individual, trust, corporation, partnership or other entity.
- 8.10 **Priority of Agreement.** If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are to be ratified in their entirety.
- 8.11 **No Construction Agent Drafter.** This Agreement is not to be construed against the drafting party.
- 8.12 **Authority to Contract.** Each party represents and warrants that said party is authorized to enter into this Agreement and to be bound by the terms of it.
- 8.13 **Arbitration.** Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, or any other dispute, controversy or claim between any of the parties hereto shall be settled by arbitration in accordance with the Rules of the American Health Lawyers Association then pertaining in Orange County, State of Florida (“AHLA Rules”), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall be selected in the manner provided in the AHLA Rules. The number of arbitrators shall be one (1). The place of arbitration shall be Orange County, Florida. The arbitrator shall be deemed to possess the powers to issue mandatory order and restraining orders in connection with such arbitration ; provided, however, that nothing in this Section 8.13 shall be construed so as to deny any party hereto the right and power to seek and obtain injunctive relief in a court of equity for any breach or threatened breach by any party of any provision contained herein.
- 8.14 **Submission to Jurisdiction.** Subject to the provisions of Section 8.13 above (so that in the event of any inconsistency between the terms of this Section 8.14 and the terms of Section 8.13 above, the term of Section 8.13 govern), each of the parties irrevocably and unconditionally: (i) agree that any suit, action, or other legal proceedings arising out of, or relating to, this Agreement shall be brought in the courts of record to the State of Florida or any other jurisdiction determined by Covered Entity; (ii) consent to the jurisdiction of each such court in any such suit, action, or proceeding; (iii) waive any objection which it may have to the laying of venue of any such suit, action, or proceeding in any such courts; and (iv) agree that service of any court paper may be affected on such party by any manner as may be provided under applicable law or court rules of Florida.

IN WITNESS WHEREOF, the parties have hereunto set their hand effective the day and year first above written.

COVERED ENTITY:

FACILITY NAME

By: _____

Print Name: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE:

HCPCS

By: _____

Print Name: Julie Ann Kemman

Title: President

Date: _____