

BUSINESS ASSOCIATE AGREEMENT - Contractors

This Business Associate Agreement (“Agreement”) is entered into as of this 1st day of August 2012 between **MedTech Enginuity Corp. (Covered Entity)** the undersigned Contractor (Business Associate/1099 Employee).

RECITALS

WHEREAS, MedTech Enginuity Corp. is a Covered Entity under the Health Information Portability and Accountability Act of 1996 (“HIPPA”) and is required to enter into this Agreement to obtain satisfactory assurances that Contractor, will appropriately safeguard all Protected Health Information (“PHI”) that it receives from, or is used on behalf of MedTech Enginuity Corp..

WHEREAS, MedTech Enginuity Corp. desires to engage Contractor to perform certain functions for, or on behalf of, Medical Practice which may involve limited exposure to PHI by the Contractor, and Contractor desires to perform such functions.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement and in order to comply with all legal requirements for the protection of this information, the parties therefore agree as follows:

Definition of Terms

- The defined terms “**Protected Health Information**” (“PHI”), “**Designated Record Set**” and “**Covered Entity**” shall have the same meanings ascribed to them in 45 CFR Sections 164.501 and 45 CFR Section 16.103, respectively.
- “**HITECH**” means 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 111-005.
- “**Unsecured PHI**” shall have the same definition that the Secretary gives the term in guidance issued pursuant to § 13402 of HITECH.

Agreements:

1. Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of the PHI or EPHI other than as provided by this Agreement, and to implement administrative, physical, and technical safeguards as required by sections 164.308, 164.310, 164.312 and 164.316 of title 45, Code of Federal Regulations and HITECH to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, in the same manner that such sections apply to the Covered Entity. *See* HITECH § 13401.

The additional requirements of Title XIII of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to

Business Associate and shall be and by this reference hereby incorporated into this Agreement. *See* HITECH § 13401.

2. Business Associate agrees to adopt the technology and methodology standards required in any guidance issued by the Secretary pursuant to HITECH §§ 13401-13402.
3. Business Associate agrees to mitigate 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 and to notify Covered Entity of any breach of Unsecured PHI, as required under HITECH § 13402.
4. In the case of a breach of Unsecured PHI, Business Associate shall, promptly following the discovery of a breach of such information, notify Covered Entity of such breach. The notice shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the breach.
5. Business Associate agrees to enter into an agreement with each of its subcontractors pursuant to 45 CFR § 164.308(b)(1) and HITECH § 13401 that is appropriate and sufficient to require each such subcontractor to protect PHI to the same extent required of Business Associate hereunder.
6. Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of PHI, Business Associate and any agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including but not limited to 45 CFR §164.528.
7. Except in the case of a direct request from an Individual for an accounting related to treatment, payment, or operations disclosures through an electronic health record, if the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, if any, Business Associate shall within five (5) business days of a request notify Covered Entity about such request.
8. Covered Entity shall either request that Business Associate provide such information directly to the Individual, or it shall request that the information be immediately forwarded to Covered Entity for compilation and distribution to such Individual. In the case of a direct request for an accounting from an Individual related to treatment, payment, or operations disclosures through electronic health records, Business Associate shall provide such accounting to the Individual in accordance with and effective on the applicable date set forth in HITECH § 13405(c).
9. Business Associate shall not disclose any PHI unless such disclosure is required by Law or is in accordance with this Agreement. Business Associate shall document such disclosures. Notwithstanding anything in the Agreement to the contrary, Business Associate and any agents or subcontractors shall continue to maintain the information

required for purposes of complying with this Section 2.7 for a period of six (6) years after termination of the Agreement.

10. Business Associate and its agents or subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Business Associate agrees to comply with the Secretary's guidance on what constitutes "minimum necessary." *See* HITECH § 13405.
11. If Business Associate knows of a pattern of activity or practice by Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement, Business Associate will take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful within a period of 30 days, Business Associate will either:
 - terminate the Agreement, if feasible;
 - report the problem to the Secretary. . *See* HITECH § 13404(b).

Obligations of Contractor.

- (a) Permitted Uses and Disclosures. Contractor will not handle or store any forms of PHI directly. Contractor may assist a MedTech Enginuity Corp. in the MedTech Enginuity Corp.'s operations however the Contractor's exposure to PHI should be limited to when conducting on-site training or technical support along-side authorized users in the MedTech Enginuity Corp.'s office.
- (b) Contractor's Operations – Permitted Uses of PHI. Contractor will not handle or store any forms of PHI directly. Contractor may assist a MedTech Enginuity Corp. in the MedTech Enginuity Corp.'s operations however the Contractor's exposure to PHI should be limited to when conducting on-site training or technical support along-side authorized users in the MedTech Enginuity Corp.'s office.
- (d) Access to PHI by Individuals. Contractor shall cooperate with MedTech Enginuity Corp. to comply with 45 C.F.R. Section 164.524. If Contractor receives a request from an individual for access to PHI, Contractor immediately shall forward such request to MedTech Enginuity Corp.. MedTech Enginuity Corp. shall be solely responsible for determining the scope for access to PHI.
- (h) Security Safeguards. Contractor shall implement a documented information security program that includes administrative, technical and physical safeguards designed to prevent the accidental or otherwise unauthorized use or disclosure of PHI.
- (i) Reporting and Mitigating Unauthorized Uses and Disclosures of PHI. Immediately upon notice to Contractor, Contractor shall report to MedTech Enginuity Corp. any uses or disclosures of PHI not authorized by this Agreement. Contractor shall use its best efforts to mitigate the deleterious effects of any use or disclosure of PHI not authorized by this Agreement. Further, in the notice

provided to MedTech Enginuity Corp. by Contractor regarding unauthorized uses and/or disclosures of PHI, Contractor shall describe the remedial or other actions undertake or proposed to be undertaken regarding the unauthorized use or disclosure of PHI.

Obligations of MedTech Enginuity Corp..

MedTech Enginuity Corp. shall inform Contractor of any of the following changes which affect Contractor changes to its Notice of Privacy Practices that affect Contractor: new or changed authorizations, restrictions on use of PHI agreed to by the Provider; opt-outs concerning fundraising or marketing.

Term and Termination.

- (a) Term. This Agreement shall be for a term of two years, commencing on August 1, 2012 and ending on July 31, 2014 (“Initial Term”). This Agreement shall automatically renew for successive five (1) year periods (“Renewal Term”) unless one party notifies the other party of its intent not to renew within sixty (60) days prior to end of the Initial Term or any Renewal Term.
- (b) Termination by Breach. MedTech Enginuity Corp., at its sole option and without an opportunity to cure, immediately may terminate this Agreement without further liability if MedTech Enginuity Corp. determines that Contractor has violated a material term of this Agreement related to the protection or security of the PHI.
- (c) Termination Without Cause. Either party to this Agreement may terminate the Agreement upon provision of thirty (30) days prior written notice.
- (d) Termination for Cause. Either party may terminate this Agreement if the other has a receiver or trustee appointed for any or all of its property, becomes insolvent or otherwise is unable to pay its debts as they mature, makes an assignment for benefit of creditors, becomes subject to bankruptcy proceedings or is dissolved or liquidated.
- (e) Effects of Termination; Disposal of PHI. Contractor will not handle or store any forms of PHI directly. Contractor may assist a MedTech Enginuity Corp. in the MedTech Enginuity Corp.’s operations however the Contractor’s exposure to PHI should be limited to when conducting on-site training or technical support alongside authorized users in the MedTech Enginuity Corp.’s office. Upon termination of this Agreement, there should be no PHI in the possession of Contractor’s agents, affiliates, subsidiaries or subcontractors. Notwithstanding any provision herein to the contrary, Contractor may retain information that has been de-identified and data obtained pursuant to the Data Use Agreement of even date

herewith.

- (f) Mitigating Effects of Termination. In the event of termination of this Agreement, the parties agree to work together to effectuate a smooth transition for both parties and continuous protection of the PHI disclosed or maintained by Contractor.

Miscellaneous.

- (a) Change in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, MedTech Enginuity Corp. shall notify Contractor of any actions it reasonably deems are necessary to comply with such changes, and Contractor promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, either party may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues. If, within fifteen (15) days following the notice, the parties are unable to agree upon such amendments, either party may terminate this Agreement by giving the other party at least thirty (30) days written notice.
- (b) Amendments. By mutual consent of the parties this Agreement may from time to time be modified or amended in writing and such written modifications signed by the parties shall be attached to and become part of this Agreement.
- (c) Severability and Survival. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. The obligations of the parties to the PHI shall survive the termination of this Agreement.
- (d) Counterparts. This Agreement may be executed in counterparts, any of which is considered to be an original agreement.
- (e) Governing Law. This Agreement shall be construed broadly to implement and comply with the requirements relating to the HIPAA laws and regulations. All other aspects of this Agreement shall be governed under the laws of the State of Alabama, and venue for any actions relating to this Agreement shall be proper in Jefferson County, Alabama.
- (f) Assignments/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Contractor may not assign or subcontract the rights or obligations under this Agreement without the express written consent of MedTech Enginuity Corp.. MedTech Enginuity Corp. may assign its rights and obligations under this Agreement to any successor or affiliated entity.

- (g) Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior discussions, negotiations and services for like services.
- (h) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- (i) Intent to Comply with Laws. This Agreement shall be construed consistently with all Privacy Laws and in favor of the protection of PHI.

Signatures:

Contractor

MedTech Enginuity Corp.

By: _____

By: _____

Robert L. Bruce
President, CIO

Date: _____

Date: _____

2. BUSINESS ASSOCIATE OBLIGATIONS

To the Agreement, add the following provisions in the section describing the Business Associate’s obligations:

3

3. COVERED ENTITY’S OBLIGATIONS

To the Agreement, add or replace the following provision in the section describing Covered Entity’s obligations:

3.1 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522 and/or HITECH § 13405(a).

IN WITNESS WHEREOF, the parties have caused this Amendment to the Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

BUSINESS ASSOCIATE COVERED ENTITY

By: By:

Name: Name:

Title: Title:

Date: _____ Date: _____

These