

SERVICE AGREEMENT

THIS SERVICE AGREEMENT ("Agreement") is made as of the ___ day of _____, _____ ("Effective Date") between _____ having its principal place of business at _____, ("Client"), and **One To One Health, LLC**, having its principal place of business at 1067 Riverfront Parkway, Suite 201, Chattanooga, TN 37402 ("One To One") (individually a "Party" and collectively "Parties"), whereby One To One agrees to provide to Client the services described below, subject to the following terms and conditions:

1. STATEMENT OF WORK

- A. **Description** – Subject to the terms of this Agreement, One To One shall provide the personnel and such tools, supplies and equipment as may be reasonably and ordinarily required to operate, manage and administer health care clinic(s) for the benefit of Client employees and eligible dependents ("Participants") as more fully described in the project description and Statement of Work attached hereto as **Schedule A** (the "Services"). One To One shall arrange for physician(s), nurse practitioner(s), physician assistant(s), nurses, and/or medical assistants ("Medical Professionals") to provide the Services that constitute medical services, including, but not limited to, the Primary Care Services (collectively, the "Medical Services"). One To One shall arrange for its employees or independent contractors (the "Management Personnel", and together with the Medical Professionals, the "Personnel") to provide the Services that are not Medical Services (collectively, the "Management Services"). As identified on **Schedule A**, all such costs and expenses associated with the provision of Personnel shall be considered pass through costs, and Client shall pay to One To One the actual cost of such Services. Personnel shall perform the Services primarily at the onsite health clinic or clinics (the "Clinic(s)") located on premises as selected by Client and described on **Schedule A** attached hereto. Client and One To One may revise, amend, alter, modify, add or extend the Services from time to time by mutual written agreement.
- B. **Allocation of Responsibilities** – One To One shall bear primary responsibility for determining any specifications required of the Clinic, equipping and maintaining the Clinic and otherwise operating the Clinic in accordance with applicable standards of care. One To One shall provide, or arrange for the provision of, all materials and equipment necessary to perform the Services, maintain such materials and equipment so that they are safe and effective, and conduct all necessary inspections and maintenance with regard to the same. Unless specifically set forth in **Schedule B**, the cost of all such materials and equipment (including replacement equipment reasonably necessary for the provision of the Services), shall be billable by One To One to Client at actual cost. One to One shall prepare the initial budget and any revised or subsequent budgets during the term or renewal terms of this Agreement. Such budgets shall be subject to the prior approval of Client, which approval shall not be unreasonably withheld. Any expense items related to replenishing of supplies, once approved by Client, will not be subject to further pre-approval. Any non-budgeted items of \$500 [Note: the amount requiring preapproval by Client is ultimately a business term for Walton County's consideration] or more shall require prior approval from Client,

which approval shall not be unreasonably withheld. The Parties agree that all such materials and equipment billed to and paid for by Client shall become the property of Client, subject only to One To One's right to use the equipment to provide Services during the term or renewal terms of the Agreement. One To One will adhere to all infection control and bio-waste vendor policies and procedures.

C. Pricing:

- i. Client shall compensate One To One, within thirty (30) days from receipt of invoice, for the Management Services in accordance with the pricing schedule attached hereto as **Schedule B**. Client shall establish and utilize ACH online banking for payment transfer method. One To One shall be entitled to be paid interest at one and a half percent per month for any undisputed amount that is past due after 120 days. In the event of non-payment following thirty (30) days after interest begins to accrue, One To One shall provide thirty (30) days' notice to Client, at which time if full payment of all undisputed amounts is not paid at the end of said period, One To One shall be entitled to immediately suspend performance or terminate this Agreement in accordance with **Section 3** of this Agreement. Such termination does not relieve Client of its obligations to remit payment for all outstanding amounts plus accrued interest and of Client's liability for any other expenses, including without limitation, collection costs. **[Note: it is unclear how the Fixed Fee and Pass Through items on Schedule A relate to the categories on Schedule B and to the costs/expenses which must be paid by Client pursuant to Section I(B) are these all different things or are the same categories of payments being referenced more than once in different places. Also, the fixed fee amounts and the amounts for the categories on Schedule B have not been provided and need to be filled in]**
- ii. Performance Metrics – One To One agrees to maintain a high level of service and performance, and agrees to those certain Performance Metrics as outlined in **Schedule D**. Client shall deduct from the Management Fee payment at the intervals indicated based on performance that falls below those levels outlined in **Schedule D**.

- D. Services Requirements - All Services will be performed in accordance with the terms of this Agreement and applicable exhibits, by trained, properly credentialed and supervised Personnel in accordance with industry standard practices and all applicable laws and regulations as mandated by the federal government, state government or any local authority having jurisdiction over the Services and Personnel. One To One agrees to take all commercially reasonable steps to correct any deficiencies in the Services. All work performed by One To One shall be performed in compliance with all applicable federal, state and local safety laws, regulations and ordinances. One To One further agrees to comply with all applicable Client policies governing Services as posted on Client's website or as provided to One To One. One To One agrees that its patient portals will be in compliance with Section 508 of the Rehabilitation Act to the extent applicable. Client agrees to provide at least thirty (30) days' notice to One To One of any changes to its

policies that impact the Services.

- E. Term - This Agreement shall be effective as of _____. The date that the Services begin is the Commencement Date. The Agreement shall expire three years from the Commencement Date, unless earlier terminated as provided herein, and thereafter shall automatically renew for successive additional one-year periods unless either Client or One To One gives written notice of termination 180 days prior to the end of the initial term or any renewal term. Notwithstanding the foregoing, the Agreement may not be terminated by either party effective within one year of the Commencement Date other than for cause under Section 3(A) of this Agreement. One To One agrees that during the Term of this Agreement, it shall cap any increase in costs for salaries and wages to an aggregate cost of five percent (5%) per year unless otherwise approved by Client.

2. PERSONNEL

- A. One To One's Responsibility; Legal, Wage and Tax – One To One hereby assumes all legal responsibility as the employer or contractor of the Personnel for the performance of the Services, including responsibility for payment of compensation due such Personnel and compliance with all applicable Federal, state, and local tax requirements, including withholding of taxes (if applicable), related to the performance of Services by One To One, which such expenses shall be pass through costs to Client. One To One shall recruit and hire eligible Personnel, provided that the Parties shall work collaboratively in interviewing and selecting Personnel suitable for the Clinic. One To One further assumes all responsibility for supervision, direction, orientation, assignment, training, tax withholding (if applicable) and reporting, performance evaluations, promotions, and termination of such Personnel; provided that Client shall have the right to request One To One to remove any Personnel hired by One To One for the Clinic, for good and legal cause, upon written notice. Client and One To One shall work collaboratively to resolve any issues that may arise with any Personnel. [[NOTE: How does this relate to the fees/costs which must be paid by Client?]]
- B. Quality –
- i. All Personnel selected by One To One to perform Services shall possess sufficient useful skills and experience as to be able to perform such Services, from said Personnel's initial date of involvement, in accordance with the applicable standard of care and in a competent and professional manner. One To One and all Personnel shall comply with all applicable local, state, and federal laws, rules and regulations in the delivery of the Services.

- ii. One To One shall contract with and ensure that each Medical Professional is obligated to meet the following criteria during the term of this Agreement: (a) be qualified; (b) maintain a duly issued and active license to provide the Medical Services in the State of Georgia; (c) be in good standing with his or her profession and state professional association; (d) not be subject to any license restriction, revocation, or suspension; and (e) and, except to the extent that this requirement is prohibited under applicable law, shall not be, or have been, convicted of a felony or crime involving moral turpitude. Notwithstanding anything to the contrary in this Agreement, each Medical Professional shall determine his or her own means and methods of providing the Medical Services, and nothing herein shall interfere with, influence, or direct such Medical Professional's medical judgment.
 - iii. In the event that any Medical Professional does not meet the criteria in Section 2(B) (ii) during the term of this Agreement, One To One shall promptly replace such Medical Professional with another Medical Professional that does meet such criteria.
- C. Equal Employment Opportunity – One To One agrees to enact and maintain a policy to employ, train, reward and promote Personnel based on the requirements of their respective jobs and their ability to perform their jobs. This policy shall be implemented without regard to race, color, religion, national origin, sex, age, physical or mental handicap or status as a disabled veteran or veteran of the Vietnam era. One To One further agrees to comply with all applicable federal, state and local equal employment opportunity laws and regulations including Title IV of the Civil Rights Acts of 1964, Executive order 11246, and, to any applicable provisions set forth in the HIPAA regulations found at 41 C.F.R. 60-1.4, 41 C.F.R. 60-250.4, 41 C.F.R. 60-741.4, 41 C.F.R. 60-1.8 and 41 C.F.R. 1-12803.10.

3. TERMINATION

- A. Termination With Cause. Either Party may terminate this Agreement for cause upon thirty (30) days prior written notice of termination, in the event the other Party has failed to cure a breach of this Agreement within fifteen (15) days after receiving written notice specifying any such material breach. If the breaching Party has taken substantial, good faith steps to cure the breach within the fifteen (15) day cure period, but for reasons beyond its reasonable control cannot fully correct the breach, the other Party shall provide an additional fifteen (15) days to the breaching Party to cure the breach. Client shall further be entitled to terminate this Agreement in the event that One To One shall make a general assignment for the benefit of creditors or file a petition for adjudication as a bankrupt or for any other relief under any debtor relief law, or if a petition is filed against either Party for adjudication of such Party as a bankrupt or for any other relief under any debtor relief law. Notwithstanding any other provision of this Agreement, if One To One or Client engages in fraudulent conduct or intentional misrepresentation, the other Party shall have the right to rescind, cancel or terminate this Agreement. Notwithstanding any provision to the contrary, the offending Party will be liable for any and all payments and losses, costs, or damages sustained by the other Party as a result of the fraudulent conduct or intentional

misrepresentation.

- B. Termination Without Cause. Either Party may terminate this Agreement without cause after the original term, upon giving the other Party at least one hundred and eighty (180) days written notice.
- C. Effect of Termination. The expiration or the termination of this Agreement shall not affect the obligation of Client to pay compensation to One To One or pay for any outstanding invoice(s) for the period prior to such expiration or termination and shall not affect the obligation of One To One to provide quarterly reports for the period prior to the effective date of such expiration or such termination. In addition, upon the expiration or termination of this Agreement, One To One shall use its commercially reasonable efforts to cooperate in the transition of the Clinic to any successor Clinic provider (including, but not limited to, making employee medical records reasonably available to any successor in accordance with federal and state law).

4. SUPERVISION

One To One shall efficiently and adequately supervise the performance of the Personnel who provide or contribute to the provision of Services. The right and duty to make work assignments, to correct deficient performance, and to effectuate all other aspects of its supervisory responsibility hereunder shall at all times remain with One To One.

5. PERMITS AND LICENSES

- A. One To One's Obligation – One To One shall obtain all necessary permits, licenses and certifications necessary for the performance of the Services. One To One will observe and abide by all applicable laws, regulations, ordinances and other rules of the federal, state, or local authority where the work is done, or any other duly constituted public authority.
- B. Laws – One To One shall comply with all federal, state and local laws, regulations, executive orders and the like, including those regarding employment, age, citizenship, hours, wages, withholding and conditions of employment affecting the Services covered by this Agreement.
- C. Practice of Medicine – The Parties understand and agree that the Scope of Work [[Note: Where is the Scope of Work document? This should be made an exhibit or included within the text of the contract]]pursuant to this Agreement may include or may be in the future amended to include One To One's arrangement for the provision of Services by one or more licensed physicians who will examine and/or treat patients at the health care facility Clinic or will directly supervise the provision of Services by nurses, nurse practitioners or other allied health care personnel, as required by applicable medical practice acts or other laws. If applicable law prevents or makes it inadvisable for One To One to directly employ a physician to provide services required to be performed by a physician under this Agreement, or in the event that One To One deems it advisable in its sole discretion, One To One may, for purposes of providing Services pursuant to the terms of this Agreement,

enter into a subcontract or similar relationship with one or more physicians, professional corporations or other entities ("Physician Services Provider") duly authorized to practice medicine. Such subcontracting costs, if any, shall be at no additional cost to Client. One To One shall require all Physician Services Providers to agree to all terms and to perform all obligations under this Agreement related to the providing Personnel and Services.

6. INDEMNIFICATION.

- A. To the extent allowed by law, each Party agrees to defend, indemnify and hold harmless ("Indemnify") the other Party and its owners, employees, and agents against any loss, damage, expense, or cost, including reasonable attorney's fees, arising out of any direct claim or any third party claim, demand, action, suit, investigation, arbitration or other proceeding by a third party ("Liabilities") resulting from or relating to the indemnifying Party's (and in the case of One To One, any Personnel's) breach of any duty, representation, or warranty of this Agreement. Notwithstanding anything herein to the contrary, One To One shall Indemnify Client and its governing body members, employees and agents from any Liabilities incurred by Client and its owners, employees, and agents resulting from or relating to any act or omission by One to One or the Personnel.

- B. If a Party entitled to indemnification hereunder (the "Indemnified Party") becomes aware of any matter it believes is indemnifiable hereunder involving any claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each an "Action"), the Indemnified Party, as a condition precedent hereto, shall give the other Party (the "Indemnifying Party") prompt written notice of such Action. Such notice shall (i) provide the basis on which indemnification is being asserted and (ii) be accompanied by copies of all relevant pleadings, demands, and other papers related to the Action and in the possession of the Indemnified Party. The Indemnifying Party shall have the sole right to settle and/or to defend any Action with counsel of the Indemnifying Party's choice reasonably acceptable to the Indemnified Party. Any Indemnified Party shall have the right to participate in the defense of any Claim with counsel of its choice at its own expense. Any compromise or settlement of an Action shall require the prior written consent of both Parties hereunder, such consent shall not to be unreasonably withheld, delayed or conditioned.

7. INSURANCE

- A. One To One shall carry, during the term of this Agreement at the expense of the client, at least the following minimum insurance:
 - i. Statutory Workers' Compensation as required by statute, to include a waiver of subrogation.

 - ii. Employer's Liability Insurance with minimum limits of \$500,000 per accident and shall name Client as an additional insured.

- iii. Comprehensive General Liability \$1,000,000 per occurrence bodily injury and property damage with a \$5,000,000 general aggregate. Policy shall name Client as an additional insured, shall include a waiver of subrogation in favor of Client, and coverage should stipulate it is primary and not contributing to any insurance incidentally carried by Client.
- iv. Professional Liability Insurance in the amounts of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, or such other amounts as required under applicable laws of the State of Georgia.
- v. Directors and Officers coverage with minimum limits in the amount of \$1,000,000 per claim/loss with an annual aggregate of \$3,000,000.

[NOTE: risk management should review if these coverages and amounts are sufficient]

- B. One To One shall furnish to Client upon request certificate(s) properly executed by its insurance carrier showing that all insurance is in full force and complies with the requirement of this Agreement. Such certificates shall provide that the coverage provided shall not be cancelled or reduced without thirty (30) days advanced written notice having been provided to
- C. One To One shall insure that any Medical Professionals who perform Medical Services hereunder shall have medical malpractice insurance coverage in amounts the amounts of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, or such other amounts as required under applicable laws of the State of Georgia.
- D. In the event that any Medical Professionals are engaged by One To One to perform any Services hereunder, One To One shall ensure that each such Medical Professional maintains the required types and amounts of insurance coverage as set forth in this Agreement.
- E. Upon expiration or termination of this Agreement, One to One agrees to obtain two years continuous liability insurance or “tail” coverage (whichever is more cost effective) for all acts or claims of omission or negligence which may be asserted or brought during said two year period against One to One or any of its Personnel or medical services providers providing, or who have provided, Services hereunder, with said two year period to commence on the last day of the term of this Agreement and any extension hereof.

8. CONFIDENTIALITY AND NON-USE

- A. Confidential Information Defined – In order to provide Services hereunder, One To One and/or Client may be furnished with, receive, or otherwise have access to information and materials that are considered to be confidential and/or proprietary to the other Party (“Confidential Information”). Confidential Information includes all information, in any form, furnished or made available directly or indirectly to each Party orally or in writing that relates in any way to the other Party; their respective existing or former employees or

Participants; existing, former or potential customers; or other third parties with whom that Party has a business relationship. Without limiting the generality of the foregoing, One To One's costing and pricing data and means are confidential and proprietary. Therefore, each Party shall maintain any and all such information and information transmitted to or otherwise acquired as a result of performing its Services under this Agreement, in confidence, without disclosing same to any third party unless having the prior written permission of Client or One To One, as the case may be, or as required by law. All information received, developed or otherwise acquired during or because of the course of performing the Services under this Agreement is presumed to be confidential. Confidential Information will include medical records or information pertaining to the diagnosis or treatment of any patient, provided that any medical records or Protected Health Information as defined by Federal Law under HIPAA shall not be deemed Confidential Information of Client, nor shall Client have any right to review or access such information except as provided by law.

- B. For purposes of this Agreement, Personal Information shall mean information provided to One To One by or at the direction of Client, or to which access was provided in the course of One To One's performance of the Services under this Agreement that: (i) identifies an individual (by name, signature, address, telephone number or other unique identifier) and (ii) that can be used to authenticate that individual (including, without limitation, passwords or PINs, biometric data, unique identification numbers, answers to security questions, or other personal identifiers). An individual's social security number, even in isolation, is Personal Information. Personal Information includes information about Client employees and their dependents and beneficiaries, as well as information about employees of Client's clients for whom One To One provides Services, and their dependents and beneficiaries. Any Personal Information disclosed by Client shall be considered Confidential Information.
- C. Confidential Information Exclusions – Notwithstanding any provisions of this Section to the contrary, Confidential Information will not include information that is: (i) already lawfully known by the other Party prior to receiving such information from the disclosing Party; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act of the receiving Party; (iii) subsequently disclosed on a non-confidential basis by a third party not having a confidential relationship with the disclosing Party and such third party rightfully acquired such information; (iv) independently developed by the other Party without reference to the disclosing Party's clients' materials; or (v) communicated to a third party with the express written consent of the disclosing Party. The Parties specifically understand and agree that Personal Information which is Protected Health Information or constitute medical records is not Confidential Information or Client Information. **[NOTE: The purpose of the prior sentence is unclear]** The foregoing exceptions do not apply to the disclosure of Personal Information, which shall not be disclosed without the prior written consent of the employee or person to whom the Personal Information pertains, unless permitted or required by law.
- D. Protection of Confidential Information - Each Party will keep and maintain all Confidential Information in strict confidence and will protect Confidential Information with at least the

same degree of care (and in any event no less than reasonable care) that it uses to protect its own Confidential Information. One To One may disclose such information of Client to permitted subcontractors performing Services, provided that One To One will cause all recipients to sign a non-disclosure agreement.

- E. Required Disclosure - If either Party is required by law to disclose Confidential Information of the other, the Party so required will give prompt advance written notice of such requirement to the other Party. Reasonable efforts will be made to provide this notice in sufficient time to allow the other Party to seek an appropriate confidentiality agreement, protective order, or modification of any disclosure, and the Party required to disclose Confidential Information will cooperate in such efforts.

9. INDEPENDENT CONTRACTOR

One To One shall be at all times be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as an independent contractor. Any provisions in this Agreement which may appear to give Client the right to direct One To One as to the details of doing the work or to exercise a measure of control over the work shall mean only that One To One shall follow the desires of Client in the results of the work. Neither One To One nor any of its employees or agents shall be considered an employee or agent of Client, nor shall any partnership, co-venture or joint employer relationship be created by virtue of this Agreement or of its performance. All persons engaged by One To One, either as employees or agents to assist One To One in the performance of this Agreement, will be of its own selection, for its own account and at its own expense. No prior course of dealing between Client and One To One shall be of any effect to modify in any respect One To One's status under this Agreement as an independent contractor.

10. NOTICES

Any notice to be given hereunder by either Party shall be in writing and shall be deemed to be given if sent by registered or certified mail, and upon receipt by the other Party if sent by regular mail, or facsimile transmission addressed as follows:

If to One To One: One To One Health, LLC
1067 Riverfront Parkway, #201
Chattanooga, Tennessee 37402
Attn: David Kinzler (CEO)

If to Client: Board of Commissioners of Walton County, Georgia
100 North Broad Street
Monroe, Georgia 30655
Attn: David Thompson, Chairman

11. MODIFICATIONS AND AMENDMENTS

Any changes in the provisions of this Agreement made subsequent to the execution of this Agreement, except changes in the work and price, shall be made by formal amendments identified as such, executed and approved in the same manner as this Agreement. Upon the renewal or extension of this Agreement, unless otherwise set forth in writing, One To One may increase any prices charged for services under this Agreement, by the percentage increase in the cost of living for the previous year, using the Medical CPI published by the Bureau of Labor Statistics.

12. PHYSICIAN SERVICES

Neither One To One nor Client shall engage in the practice of medicine nor in any way direct or control the practice of medicine or direct the provision of health services required to be provided by a licensed physician. It is agreed that One To One's role under this Agreement shall, at all times, be that of providing Management Services and overseeing the administration of Management Services under this Agreement and that any Medical Services to be provided under this Agreement shall be solely provided by and under the direction of a physician or Medical Professional.

13. AUDIT AND EXAMINATION; SECURITY

A. Audit and Examination

- i. During the Term and for a period of two (2) years thereafter, upon reasonable advance written notice by Client and subject to the limitations herein, One To One shall provide Client auditors with access to One To One's premises, systems and documentation as Client may reasonably request in order to verify One To One's compliance with the accuracy of bills sent pursuant to this Agreement and security of Protected Health Information.
- ii. Such audits shall (i) be performed during usual business hours and without unreasonable interruption of the business of One To One, (ii) commence on a mutually agreeable date provided that, unless otherwise agreed, such audit shall commence within thirty (30) days after request therefore, (iii) be performed not more often than once per year, (iv) be performed not more than two years following the expiration or termination of this Agreement and (v) in the case of financial audits, be limited to revenues and costs directly related to this Agreement. For the purposes of determining the proper amounts payable under the provisions of this Agreement, Client's right to audit provided for in this subparagraph shall include the right to audit or review underlying wage or cost information including auditing the composition of any specified percent, fixed rate or fixed fee referred to in this Agreement. Any audit hereunder shall be conducted only following entry into a confidentiality and non-disclosure agreement, subject to any limitations which may be imposed by applicable law.
- iii. One To One shall maintain complete and accurate accounting records in connection with Services performed and materials provided hereunder, in accordance with

generally accepted accounting principles, to substantiate its charges.

- iv. In connection with its obligations under this audit section, One To One shall reasonably cooperate and provide to Client Auditors, in a timely manner, all such assistance as they may reasonably require in connection with any audit or examination. Client shall provide One To One with a reasonable time period to complete the requests of the auditors and examiners. Client shall provide One To One with a copy of the results from any such audit upon One To One's request.

B. Security. Notwithstanding anything to the contrary contained in this Agreement and in addition to, and not in lieu of, any other provisions in this Agreement regarding confidentiality and data security, the following shall apply with respect to Restricted Data:

- i. One To One represents and warrants that it has and shall maintain and enforce, at all locations where services relating directly or indirectly to the Services are performed, a written comprehensive information security program containing appropriate administrative, technical and physical safeguards for the security and protection of all restricted or protected data, including but not limited to information protected by HIPAA regulations, Social Security numbers and personally identifiable information protected by State statutes or regulations ("Restricted Data"). One To One further represents and warrants that its security program is periodically reviewed and appropriate updates are implemented to address any gaps identified in its security program. One To One agrees to make its security policies and procedures available to Client upon reasonable request.
- ii. One To One represents that its written information security program and computer system security procedures that are at least (i) equal to industry standards applicable to medical clinics; and (ii) in compliance with applicable law, specifically including applicable HIPAA security requirements and the requirements of applicable State law concerning any Social Security numbers included in the Restricted Data.
- iii. With respect to any Restricted Data provided to One To One by Client, One To One expressly agrees to:
 - a. Protect the security and confidentiality of Restricted Data it receives or accesses in accordance with its information security program and this Agreement
 - b. Limit access to Restricted Data to those employees who have a legitimate business need to know the information.
 - c. Prohibit disclosure of any social security numbers included in the Restricted Data except as expressly permitted in accord with HIPAA regulations and federal and state law.
 - d. Require all of its subcontractors and agents that receive, use or have access to Restricted Data to agree in writing to implement reasonable and appropriate security safeguards to protect it and to agree in writing to the confidentiality and security requirements of HIPAA regulations and applicable federal and state

laws.

- e. Understand the requirements of applicable federal and state law concerning breaches of security and notification of disclosures of Social Security numbers and personally identifiable information, and to immediately report to Client any security incident involving any social security numbers, and shall promptly report to Client, within not more than two (2) business days, in the event of any unauthorized disclosure of or access to Restricted Data, or security breach thereof (such as through loss, or theft of laptop computers, theft of customer data, system security failures, etc.), and to provide Client with all information necessary to permit Client to timely comply with the notification provisions of HIPAA and of applicable State law and any implementing rules. To the extent One To One is required to make its own notification under law concerning any Restricted Data, One To One agrees, to the extent allowable by law, to cooperate with Client regarding the notification process prior to making such notification.
 - f. Implement reasonable policies and procedures designed to detect and provide appropriate response to relevant “Red Flags” that identity theft may be occurring (as defined in 16 C.F.R 681.2) or that may arise in the performance of One To One's activities, if One To One has access to customer information from covered accounts under the Red Flag Rules. One To One agrees that policies and procedures to detect relevant “Red Flags” are updated periodically. One To One further agrees to notify Client of the detection of a Red Flag and to implement reasonable steps to prevent or mitigate identity theft.
- iv. If Client reasonably determines, following any requested review of One To One's security practices with respect to the Services (including in connection with a Client “technology due care assessment” or similar review), that there are any material gaps or deficiencies in such One To One security (e.g., if, with regard to One To One's security, Client has what is considered a “strong recommendation” under Client's technology review procedures as of the effective date of this Agreement), then the Parties shall work together in good faith to reach a mutual agreement by which to address such gaps or deficiencies.
- C. Unauthorized Access - One To One shall use commercially reasonable efforts and all efforts required by applicable laws and applicable industry standards to secure and defend the Services against “hackers” and others who may seek to breach the security of the Services including unauthorized access to the Services, or unauthorized modifications of the Services, and to rectify any such breaches or modifications.
- D. Testing - One To One shall periodically (at least annually) test the software code and other aspects of the Services for potential areas where security could be breached. One To One shall report to Client promptly any breaches of security (including breaches of One To One's security processes), failure to comply with Client security protocol and unauthorized modifications of, or access to, the Services to the extent that there existed a substantial probability that such breaches could have affected Client or information maintained pursuant to this Agreement.

- E. Client may be a covered entity as defined under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (commonly referred to as the “HITECH Act”), and the regulations promulgated under the foregoing from time to time by the United States Department of Health and Human Services (collectively, as amended from time to time, “HIPAA”).
- F. One To One may be a business associate as defined by HIPAA to perform Services pursuant to this Agreement or other agreements between the Parties. One To One agrees to enter into a business associate agreement with Client in the form attached hereto as Schedule E.

14. BUSINESS CONTINGENCY

One To One shall maintain a business contingency plan designed to address any emergency business shutdowns, etc. and will provide such plan to Client upon request. In the event of an actual or perceived emergency issue, disaster, disruption of the Service or an outage, One To One shall (a) promptly provide Client with notice of the same and ongoing status updates. If the Services are not reinstated within reasonable recovery times, Client shall have the right to terminate this Agreement immediately upon written notice to One To One. In the event of such termination, One To One shall be relieved of its liability under this Agreement with respect to other non-performance or non-compliance under this Agreement resulting from such emergency issue, disaster, disruption of the Service or an outage, unless One To One is guilty of negligence or other fault.

15. MISCELLANEOUS PROVISIONS

- A. The entire Agreement between the Parties with respect to the Services is expressed in the written documents, including the schedules and amendments constituting this Agreement between the Parties, and supersedes all proposals and negotiations not expressly set forth herein., except for proposals and representations about Services under this Agreement contained in the One To One Response to Client’s Request for Proposal, which representations are incorporated herein.
- B. Neither Party shall be liable to the other under any circumstances for incidental, consequential, indirect, exemplary or punitive damages of any kind under any theory, whether sounding in tort, contract or otherwise.
- C. This Agreement is entered into in Georgia and shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of Georgia. State or federal courts in or encompassing Walton County, Georgia shall have sole and exclusive jurisdiction over the Parties and over any action arising out of or in connection with this Agreement or its breach, and such courts shall be the sole and exclusive venue for any such action.
- D. In the event of any dispute or disagreement between the Parties hereto, either with respect to the interpretation of any provision of this Agreement or the respect of the performance

by either Party of its duties hereunder, each of the Parties shall appoint a designated officer to meet for the purpose of endeavoring to resolve such dispute or to negotiate for an adjustment to such provision. No formal proceedings for the judicial or other resolution of such dispute may be commenced until the date on which either of the designated officers notifies the other in writing that he/she has concluded that an amicable resolution of the matter in issue does not appear likely, provided that either Party may seek injunctive or other equitable relief to prevent the disclosure of any confidential information or to address any other issue that may cause irreparable harm to the Party seeking such relief if action is not immediately taken.

- E. Headings provided in this Agreement are provided solely for the convenience of the parties and shall not in any manner affect the meaning or interpretation of this Agreement.
- F. No delay or failure of either party in exercising any right or power under this Agreement shall operate as a waiver of such right or power to prevent the future exercise of such right or power. Any waiver at any time by either party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Any waiver of this Agreement shall only be provided in writing.
- G. Any liabilities or obligations of either Party for acts or omissions arising prior to the termination of this Agreement, or relating to Confidential Information, indemnification, limitations of liability, payments, costs and expenses, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) the expiration or earlier termination of this Agreement, shall so survive. Notwithstanding anything contained in this Agreement, each Party does not waive any right or claim that it has or may have in the future.
- H. Nothing contained in this Agreement or in any bond or certificate or policy of insurance or in any provision of any indemnity shall be construed to be a waiver by Client of any other provision of federal, state, or local law affording Client protection from or limitation of tort or other liability.
- I. If any provision of this Agreement is found to be illegal or otherwise invalid, then the validity of the remaining provisions shall not be impaired. The Parties shall attempt to replace any invalid provision with a valid provision having substantially the same commercial effect as such invalid provision and the replacement provision shall be deemed effective retroactively to the effective date of this Agreement or the date of illegality, whichever is later.
- J. Neither Party shall assign, transfer, license, or resell all or any part of its rights or interest under this Agreement without first obtaining the written consent of the other Party.

EXECUTED by an authorized representative of each Party as of the date first above written.

One To One Health, LLC:

By _____

By: _____

Name: _____

Name: David Kinzler

Title: _____

Title: CEO

Date: _____

Date: _____

SCHEDULE A

SERVICES

Services: As of the Commencement Date, One To One shall operate an onsite Clinic and associated health services for Participants eligible to participate in the Services. [[Note: The specific location and hours of operation should be identified]]. The Services below are grouped by fixed fees or pass-through costs. In general, items included in fixed fee services are those that can be personally performed by clinic personnel as part of the services provided at Clinic. For example, there is no extra charge for the administration of allergy shots or the lab draw, but costs for allergy testing and the provision of the serum for allergy shots and/or any lab tests which are sent off to be performed by an outside laboratory, are considered pass through costs. One To One and Client agree that certain services may arise that are not currently contemplated to be provided and the Parties will agree as to those to be included in fixed fee services, and those to be considered as pass through services.

FIXED FEE COSTS

Primary Care Services

- Acute care: Evaluation and treatment of acute episodic injury and illness (Infections, gastrointestinal symptoms, rashes, common illnesses, basic wound care)
- Routine annual exams and screenings
- Primary care for ongoing disease management
- Immunizations
- Administration of Allergy Shots
- Communications
- Reporting Services - EMR Reports as agreed to by the Parties

[[Note: are the personnel providing the above fixed fee services not within the staffing pass through costs below? And if so, would this not often result in double charges? This needs to be clarified; also the actual fixed fee and pass through costs should be identified]]

PASS THROUGH COSTS

(Pass through costs shall be reimbursed to One to One at the all-inclusive, actual cost for the services indicated below.)

- Staffing: all costs, including but not limited to: wages, liability insurance, taxes, benefits, licensing, credentialing and continuing education
- Technology hardware and software, including but not limited to, data analytics - PEPM)
- Laboratory Testing
- Biometric Screening/Lab Draw
- Pharmacy
- Electronic Medical Record (cost varies based on provider and campaigns/messaging services chosen)
- Clinic supplies, including medical and office
- Clinic site utilities to include: internet, phone connection, maintenance, and any other similar utilities

- Marketing materials/items to promote services/programs

Please note that the Parties anticipate that costs for wages and/or salaries shall increase annually. One To One Agrees to cap any such increase to an aggregate amount of 5%.

SCHEDULE B

FEES AND PAYMENT SCHEDULE

IMPLEMENTATION FEE : _____

PROJECTED MONTHLY COST ESTIMATE: \$_____

OPERATIONAL FIXED COST	
MANAGEMENT FEE	\$ PER EMPLOYEE PER MONTH
WELLNESS PORTAL & TEXT COACHING	\$ PER EMPLOYEE PER MONTH
CALL CENTER FEE	\$ PER MONTH

PASS THROUGH COSTS
THE SERVICES AND ITEMS LISTED ON SCHEDULE A AS PASS THROUGH COSTS SHALL BE REIMBURSED TO ONE TO ONE AT THEIR TOTAL ALL-INCLUSIVE, ACTUAL COST ON A MONTHLY BASIS.

[Note: These amounts need to be filled in. Also, it needs to be clarified if these charges are in addition to the pass through and the fixed fee charges or if there is an overlap; What does the “implementation fee” cover? What does the “Projected Monthly Cost Estimate” include?]

SCHEDULE C

CLINIC OPERATION

The Clinic shall be operated at a minimum of ____hours per week. The schedule and staffing will be determined at a later date upon the mutual agreement of the parties.

[Note: This needs to be completed]

SCHEDULE D

ONE TO ONE PAY FOR PERFORMANCE PLAN

Participant Satisfaction-5% of Management fees

One to One will put at risk 5% of its established annual Management Fee for the first year of the term of this Agreement related to the participating eligible employees' satisfaction with their overall experience with One to One. One to One will administer a quarterly satisfaction survey to participants where participants will rate their satisfaction with their overall experience with One to One. If at least 90% of the participants do not rate their satisfaction as "satisfied" or "very satisfied", then One to One will credit 5% of its annual Management Fee back to the Client.

The portion of at-risk fees attributable to Participant Satisfaction will be credited back to Client in accordance with the following scale:

PERCENT OF ELIGIBLE EMPLOYEES SATISFIED OR VERY SATISFIED	CREDIT OF ANNUAL MANAGEMENT FEE TO CLIENT
90+%	0% credited to Client
< 90%	5% credited to Client

*For purposes of the performance metrics, Eligible Employees means active employees of Client covered by Client's group health plan.

Client Satisfaction-5% of Management fees

One to One will put at risk 5% of its established annual Management Fee for the first year of the term of this Agreement related to the Client's satisfaction with One to One's performance and One to One's responsiveness. If Client is not satisfied with One to One's performance and responsiveness during the first year, in Client's reasonable discretion, then One to One will credit 5% of its annual Management Fee back to the Client.

SCHEDULE E

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between _____ (the “Covered Entity”) and **One to One Health, LLC** (the “Business Associate” or “BA”) (collectively referred to herein as the “Parties” or individually as a “Party”) to be effective as of the ____ date _____, year ____ (“Effective Date”).

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement(s) (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “Business Associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) including all pertinent regulations (45 CFR Parts 160 and 64) issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology of Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921, 17931-17932 & 17934: and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the disclosure of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA, its implementing regulations, the HITECH Act and the laws of the State of Georgia.

NOW THEREFORE, in consideration of the mutual covenants contained herein which are made a contractual part hereof and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the Parties hereby agree as follows:

(A) Section 1. Definitions.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

- (A) “Breach” shall have the same meaning as the term “breach” in 45 C.F.R. § 164.042.
- (B) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR § 164.501.
- (C) “Electronic Health Record” shall have the meaning given to such term in the HITECH Act, which is an electronic record of health-related information on an individual that is created, gathered, managed, and consulted, by authorized health care clinicians and staff.
- (D) “Electronic Protected Health Information” or “ePHI” shall mean Protected Health Information that is maintained in or transmitted by electronic media.
- (E) “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (F) “Privacy Rule” shall mean the Standards of Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act and as may otherwise be amended from time to time.
- (G) “Protected Health Information” or “PHI” shall have the same meaning as the term “PHI” in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf

of Covered Entity. In general, "health information" means information in any form that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care of an individual; or the past, present, or future payment for the provision of health care to an individual. "Protected health information," for purposes of this Agreement, is health information that identifies the individual or can reasonably be used to identify the individual.

- (H) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- (I) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (J) "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of HHS in guidance or as otherwise defined in § 13402(h) of the HITECH Act.
- (K) "Unsuccessful Security Incidents" shall mean activity such as pings and other broadcast attacks on firewalls, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI.

(B) Section 2. Permitted Uses and Disclosures by Business Associate.

Except as otherwise limited in the Underlying Agreement and/or this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by Covered Entity or the minimum necessary rules, as follows:

- (A) Permitted Uses. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by the Covered Entity.
- (B) Data Aggregation. Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B) to the extent specifically required under the Agreement.
- (C) Permitted Disclosures. Business Associate shall not disclose PHI except for the purpose of performing the Business Associate's obligations under the Underlying Agreement or this Agreement. If Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to notify Business Associate within five (5) days of the discovery of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- (D) Reporting Violations. Business Associate may use Protected Health Information to report violations of the law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

(C) Section 3. Prohibited Uses and Disclosures.

- (A) Fundraising & Marketing. Business Associate shall not use or disclose PHI for fundraising or marketing purposes or any other purpose not permitted by this Agreement, the Underlying Agreement or the Privacy Rule or HITECH Act.
- (B) Restrictions. Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, as required by 42 U.S.C. § 17935(a).
- (C) Remuneration. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, unless Covered Entity obtains a valid authorization from the Individual including specifications of whether the PHI can be further exchanged for remuneration by the receiving entity or as permitted by the HITECH Act, described in 42 U.S.C. § 17935(d)(2). Business Associate shall not directly or indirectly receive payment in exchange for making certain communications to individuals about a non-healthcare related or third party product or service that encourages the recipient to purchase or use the product or service unless (i) the communication describes only a drug or biologic that is currently being prescribed for the recipient of the communication; or (ii) Covered Entity obtained a valid authorization from the Individual. However, Business Associate can make such a communication on behalf of the Covered Entity, within the scope of the Business Associate contract. This prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Underlying Agreement.

(D) Section 4. Obligations and Activities of Business Associate.

- (A) Compliance. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and the HITECH Act to the same extent as Covered Entity.
- (B) Appropriate Safeguards. Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI and electronic PHI, otherwise than as permitted by the Underlying Agreement or this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI and electronic PHI, in accordance with 45 CFR §§ 164.308, 164.310, and 164.312. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including but not limited to, 45 CFR § 164.316 and the HITECH Act, 42 U.S.C. § 17931.
- (C) Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI which was: (a) received from Covered Entity, or (b) created or received by Business Associate on behalf of Covered Entity, agrees to substantially the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. This provision shall not, however, be deemed to provide Business Associate with a right to assign, delegate or subcontract its responsibilities, except as specifically provided in the Underlying Agreement. In the event Business Associate creates, maintains, receives or transmits electronic PHI on behalf of the Covered Entity, Business Associate shall implement the safeguards required by the Section 4(B) above with respect to electronic PHI.

(D) Duties of Business Associate Involving Breach or Unauthorized Access, Use or Disclosure of PHI.

- (1) Discovery of Breaches. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to the Business Associate, or by exercising reasonable diligence would have been known to the Business Associate.
- (2) Notification of Breach. Business Associate shall report to Covered Entity in writing of any access, use or disclosure of PHI not permitted by this Agreement or the Underlying Agreement, and any Breach of Unsecured PHI of which it becomes aware within five (5) days of discovery. Written notice shall contain: (a) the date of discovery of the Breach and the date of the Breach; (b) a listing of the identification of individuals and/or classes of individuals who are subject to the Breach; (c) a general description of the nature of the Breach; and (d) a brief description of Business Associate's investigation, mitigation and prevention efforts; and such other information as Covered Entity may reasonably require to meet its reporting obligations under 45 C.F.R. § 164.404. Business Associate shall provide Covered Entity with updates of information concerning the details of such Breach and the final results of its Risk Assessment as required in Section 4(D)(4) as needed to ensure that such information remains current.
- (3) Notification of Security Incident. Business Associate shall notify Covered Entity within five (5) days after discovery of any suspected or actual Security Incident (as such term is defined in 45 C.F.R. § 164.304). Business Associate shall mitigate, to the extent practicable, any harmful effect known to Business Associate of any such Security Incident.
- (4) Risk Assessment and Investigation. Business Associate shall perform an appropriate risk assessment immediately following the discovery of any unauthorized access, use or disclosure of PHI to determine whether use, access, or disclosure is one "that compromises the security or privacy" of the PHI. In performing the Risk Assessment, Business Associate should consider a combination of factors such as: (a) who impermissibly used the PHI or to whom the PHI was impermissibly disclosed; (b) was the impermissibly disclosed PHI returned prior to it being accessed for improper purpose; (c) the type and amount of PHI involved in the impermissible use or disclosure; and (d) the extent to which the risk to the PHI has been mitigated. The results of such Risk Assessment shall be provided to Covered Entity in writing without unreasonable delay and in no case later than ten (10) days from the date of discovery of the unauthorized access, use or disclosure, unless the Parties mutually agree to extend such ten (10) day deadline or if a law enforcement official determines that a notification would impede investigation or cause damage to national security.
- (5) Mitigation of Harm. In the event of a Breach of Unsecured PHI, Business Associate agrees 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 or the Underlying Agreement, such as promptly obtaining assurance from the recipient that the information will not be further used or disclosed in a confidentiality agreement or will be destroyed.
- (6) Notification to the Individual. It is the sole responsibility of the Covered Entity to notify its patients of any Breach of PHI, to the extent required by law. At no time, is the Business Associate to contact or speak directly to any of Covered Entity's patients/individuals who are the subject of any Breach. Any such inquiries should be directed to the Covered Entity's Compliance and/or Privacy Officer. Business Associate shall cooperate with Covered Entity as necessary to provide such notification and any details pertaining to any Breach of PHI. [The Business Associateshall arrange and pay for notification and of any associated mitigation, such as credit monitoring, if Covered Entity determines that the Breach is significant enough to warrant such measures.]

- (7) Cooperation with Law Enforcement. Business Associate shall cooperate with Covered Entity in the event law enforcement officials institute an investigation that involves a Breach of PHI under this Agreement.
- (8) Notification to Media. For a Breach of Unsecured PHI involving more than 500 individuals, it is solely the responsibility of Covered Entity to notify the media and appropriate law enforcement and federal and state agencies as required by the HITECH Act, 45 CFR § 164.406. At no time is the Business Associate to contact or speak directly to the media without the prior authorization of Covered Entity. Business Associate shall cooperate with Covered Entity as necessary to provide such notification to the media.
- (9) Unsuccessful Security Incidents. The parties agree that this section satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted, but Unsuccessful Security Incidents (as defined in Section 1.)
- (E) Access to PHI. Business Associate agrees to provide access, at the request of Covered Entity, and in a time and manner mutually agreed upon by both parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- (F) Governmental Access to Records. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (G) Minimum Necessary. Business Associate agrees to use, disclose, and request (i) to the extent practicable, only the limited data set of Protected Health Information excluding direct identifiers, as defined in sec. 164.514(e)(2) of the HIPAA privacy rule; or, if needed by the entity, (ii) the minimum necessary Protected Health Information to accomplish the intended purpose of the use, disclosure, or request based on the Underlying Agreement. Business Associate agrees that prior to a disclosure; Business Associate shall determine what constitutes minimum necessary PHI to accomplish the intended purpose.
- (H) Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- (I) Amendments of PHI. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to in writing pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, in a time and manner mutually agreed upon by both parties.
- (J) Accounting of Disclosures. Business Associate and its 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 and the HITECH Act as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three years prior to the request, and only to the extent that Business Associate maintains an Electronic Health Record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI and if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization or a copy of the written request for disclosure.

- (K) Restrictions. Business Associate agrees to comply with any communicated restrictions in the use or disclosure of PHI to which Covered Entity has agreed pursuant to 45 C.F.R. § 164.522, and any request for restrictions by an Individual that Covered Entity or Business Associate is required by law to honor, including without limitation, any request to restrict disclosures to a health plan if the disclosure is for payment or health care operations purposes and pertains solely to a health care item or service for which the Individual has paid his or her healthcare provider out of pocket in full.
- (L) Performance of Covered Entity Obligations. In the event Business Associate is to carry out any obligations of Covered Entity under the Privacy Rule, Business Associate agrees to comply with the same Privacy Rule requirements that apply to Covered Entity in the performance of such obligations.

(E) Section 5. Terms and Termination.

- (A) Term. The Obligations of Business Associate set forth herein shall commence on the Effective Date and shall terminate when the Agreement terminates and shall terminate when the Agreement terminates and all of the PHI 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 infeasible to return or destroy PHI, the terms of this Agreement are extended to cover such information and survive termination of this Agreement.
- (B) Termination With Cause. Upon Covered Entity's knowledge of a material breach by Business Associate to the terms of this Agreement, Covered Entity may terminate this Agreement, and sever all business relationship with Business Associate, including, the termination of the Underlying Agreement and any and all Agreements with Business Associate if the breach remains uncured for more than thirty (30) days after Covered Entity gives written notice to Business Associate of the breach. The effective date of such termination will be the 31st day from the date of the written notice of breach.
- (C) Effect of Termination. The parties acknowledge that the nature of Business Associate's services for or on behalf of Covered Entity make it infeasible for Business Associate to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Accordingly, Business Associate shall be required to extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. The provisions of this Section 5(D) shall survive termination of this Agreement.
- (D) Remedies In Event of Breach. Business Associate expressly acknowledges and agrees that the breach, or threatened breach, by it of any provision of this Agreement may cause Covered Entity to be irreparably harmed and that Covered Entity may not have an adequate remedy at law. Therefore, Business Associate agrees that upon such breach, or threatened breach, Covered Entity will be entitled to seek injunctive relief to prevent Business Associate from commencing or continuing any action constituting such breach without having to post a bond or other security. Nothing in this Section 5(E) will be deemed to limit or abridge any other remedy available to Covered Entity at law or in equity. The provisions of this Section 5(E) shall survive termination of this Agreement.

(F) Section 6. Obligations of Covered Entity to Inform Business Associate of Privacy Practices and Individual Restrictions.

- (A) Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as

any changes to such notice.

- (B) Changes in Permitted Use. 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.
- (C) Restrictions of Use. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.
- (D) Permissible Requests. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or HITECH Act if done by Covered Entity, unless the Underlying Agreement includes provisions for, data aggregation or management and administrative activities of Business Associate.

(G) Section 7. Insurance; Indemnification; and Limitation of Liability.

- (A) Insurance. Commercial General Liability. Business Associate shall maintain occurrence based Commercial General Liability insurance or equivalent form with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This policy shall include Bodily Injury, Property Damage, and Personal Injury.
[Note: Risk management should be consulted as to whether this coverage and amount is appropriate, including whether occurrence based rather than claims made coverage is appropriate]]

- (B) Indemnity. To the extent allowed by law, each party hereby agrees to indemnify, defend and hold harmless the other and its parent corporation and subsidiaries, their directors, officers, agents, servants, and employees (collectively "the Indemnitees") to the extent any claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, reasonable attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution to which the Indemnitees may become subject to as the result of any: (i) breach of this Agreement by the indemnifying party; (ii) failure of the indemnifying party to perform its obligations hereunder; or (iii) negligence or legal fault of the indemnifying party, its directors, officers, agents, or employees, provided that the Indemnitees shall promptly notify the indemnifying party of any claim or cause of action alleged against the Indemnitees and provided that the indemnifying party shall be permitted to control the defense of said claims or causes of action alleged against the Indemnitees. The indemnifying party shall not settle said claims or causes of action against the Indemnitees without first obtaining the

Indemnitee's written approval. The indemnifying party will be responsible for all expenses related to the defense of said claims or causes of action alleged against the Indemnitees when control is given to the indemnifying party.

(C) Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, BUSINESS ASSOCIATE'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR ANY CLAIMS OF ANY NATURE SHALL NOT EXCEED THE AMOUNT OF FEES RECEIVED BY BUSINESS ASSOCIATE UNDER THE UNDERLYING AGREEMENT OVER THE PRECEDING TWELVE (12) MONTH PERIOD. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH THEREOF, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA, BUSINESS INTERPRETATIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL APPLY EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 8. General Provisions.

- (A) Regulatory References. A reference in this Agreement to a section in the Privacy Rule and HITECH Act means the section as in effect or as amended.
- (B) Amendment. 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 all federal, state and local laws and regulations, including, but not limited to, the requirements of the Privacy Rule, the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 and the HITECH Act. This Agreement shall be changed, modified or amended only by an instrument in writing signed by a duly authorized representative of each of the Parties, effective as of the date stipulated therein and attached hereto.
- (C) Survival. The respective rights and obligations of Business Associate with respect to PHI shall survive the termination of this Agreement.
- (D) Interpretation. Should there be any conflict between the language of this Agreement and any other Agreement entered into between the Parties, the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement. Any ambiguity in this Agreement shall be solved to permit Covered Entity to comply with the Privacy Rule and HITECH Act.
- (E) Governing Law. This Agreement shall be construed in accordance with, interpreted and governed by the laws of the State of Georgia without regard to any other state's conflicts of law provisions. Any action or proceeding regarding this Agreement shall be instituted and conducted in Walton County, Georgia. The provisions of this Section 8(E) shall survive the termination of this Agreement.
- (F) Notices. Any notices required or permitted hereunder shall be sufficiently given if sent by registered or certificated mail, postage prepaid, or personally delivered, addressed or delivered to the addresses set forth below in the signatures of this Agreement or to such other addresses as shall be furnished in writing by either party to the other party; and any such notice shall be deemed to have been given, if mailed, as of the date mailed, and, if personally delivered, as of the date delivered. Notices pertaining to unauthorized use or access of PHI or Breaches of PHI shall be submitted to the Covered Entity's Compliance and/or Privacy Officer with contact information of Business Associate's designated representative responsible for investigating such incidents.
- (G) Entire Agreement. With regard to the subject matter herein, this Agreement supersedes prior discussions, agreements, understandings, and representations between the Covered Entity and Business Associate.

Except as set forth specifically above, the terms of the Underlying Agreement remain in full force and effect.

[Signature Page Follows on Next Page]

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed as by law provided.

COVERED ENTITY:

Walton County Board of Commissioners

By: _____

Title: _____

Address: 100 N. Broad Street
Monroe, Georgia 30655

BUSINESS ASSOCIATE:

By: _____

Title: CEO

Address:

