

BUSINESS ASSOCIATE ADDENDUM

THIS BUSINESS ASSOCIATE ADDENDUM (the “*Agreement*”) is made and entered into between MITCHELL AND MCCORMICK INC. (“*Company*”), and TIPPECANOE COUNTY HEALTH DEPARTMENT (“*Customer*”).

Customer is a Covered Entity (or is a Business Associate to one or more Covered Entities) pursuant to 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*”).

Customer and Company have entered into one or more agreements (collectively, the “*Services Agreement*”) pursuant to which Company will provide certain services to Customer (the “*Services*”), and in the course of providing the Services, Customer may make available to Company or have Company obtain or create on its behalf information that may be deemed Protected Health Information subject to the provisions of HIPAA and information subject to protection under other federal or state laws.

In order to comply with the applicable provisions of HIPAA and other federal or state laws as applicable, the parties agree as follows:

1. Definitions.

1.1. Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed in HIPAA (whether or not such terms are capitalized therein).

1.2. “*Effective Date*” means the date on which this Agreement is executed by the parties.

1.3. “*Electronic PHI*” means PHI that is Electronic Protected Health Information.

1.4. “*PHI*” means Protected Health Information received or accessed by Company from or on behalf of Customer or created, transmitted, or maintained by Company for or on behalf of Customer.

2. Permitted Uses. Company may use PHI only as permitted or required by this Agreement and only for the following purposes:

- (i) as necessary to perform the Services;
- (ii) to carry out its legal responsibilities;
- (iii) for the proper business management and administration of Company;
- (iv) to provide Data Aggregation services (as defined at 45 CFR § 164.501) relating to the health care operations of Customer, as permitted by 45 CFR § 164.504(e)(2);
- (v) to de-identify any and all PHI obtained by Company under this Agreement in accordance with the standards set forth under HIPAA at 45 CFR § 164.514 and use such de-identified data in accordance with the de-identification requirements of the Privacy Rule; and
- (vi) as Required By Law.

3. Permitted Disclosures. Company may disclose PHI only as permitted or required by this Agreement for the following purposes:

- (i) as necessary to perform the Services;

(ii) for the proper business management and administration of Company or to carry out its legal responsibilities, if Required By Law, or if Company has obtained reasonable assurances that the recipient will (A) hold such PHI in confidence, (B) use or further disclose it only for the purpose for which it was received or as Required By Law, and (C) notify Company of any instance of which the recipient becomes aware in which the confidentiality of such PHI has been breached; and

(iii) as otherwise Required By Law.

4. Prohibited Uses and Disclosures.

4.1. Subject to Customer's compliance with its obligations set forth in Section 16 as applicable, Company shall not use or further disclose PHI in a manner that would violate HIPAA if done by Customer.

4.2. If Customer notifies Company that Customer has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to Section 16, Company shall be bound by such additional restrictions and shall not use or disclose PHI in violation of such additional restrictions.

4.3. Company shall not sell PHI or otherwise receive remuneration, directly or indirectly, in exchange for PHI; provided, however, that this prohibition shall not affect payment to Company by Customer for performance of the Services.

4.4. Company shall not use or disclose PHI for purposes of marketing or fundraising, unless the Services include such marketing or fundraising.

5. Subcontractors and Agents. Any disclosure to a Subcontractor or agent of Company shall be pursuant to a written agreement between Company and such Subcontractor or agent containing substantially the same restrictions and conditions on the use and disclosure of PHI as are set forth in this Agreement.

6. Minimum Necessary. Customer shall only provide and Company shall only request, access, use, and disclose only the minimum amount of PHI necessary, in accordance with HIPAA, to perform the Services.

7. Certain Privacy Rule Compliance. To the extent that Company is to carry out one or more of Customer's obligations under Subpart E of Part 164 of HIPAA (generally known as the HIPAA Privacy Rule), Company shall comply with such requirements that apply to Customer in the performance of such obligations.

8. Safeguards. Company at all times shall maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, availability, and integrity of Electronic PHI that it creates, receives, maintains, or transmits in accordance with the regulations set forth at 45 CFR § 164.308, 45 CFR § 164.310, and 45 CFR § 164.312.

9. Breach Investigation and Reporting.

9.1. As soon as practicable following any actual or reasonably suspected use or disclosure of PHI in a manner not permitted under HIPAA, Company shall assess whether such actual or suspected impermissible use or disclosure was of PHI that is Unsecured Protected Health Information.

9.2. If pursuant to the evaluation described in Section 9.1, Company reasonably determines that such impermissible use or disclosure constitutes a Breach of PHI that is Unsecured Protected Health Information, Company shall provide Customer, without unreasonable delay but in no case later than 14 days following such determination, with such information, to the extent available, as is required pursuant to HIPAA or as reasonably requested by Customer, including the date of discovery thereof, the identities of affected individuals (or, if such identities are unknown at that time, the classes of such individuals), and

a general description of the nature of the incident. Company shall supplement such notice with information not available at the time of the initial notification as promptly thereafter as the information becomes available to Company.

9.3. If pursuant to the evaluation described in Section 9.1 Company determines that such impermissible use or disclosure does not constitute a Breach of PHI that is Unsecured Protected Health Information, Company shall notify Customer in writing of such impermissible use or disclosure of PHI and of such determination promptly following such determination.

9.4. For purposes hereof, an impermissible use or disclosure shall be deemed discovered by Company as of the first day on which such impermissible use or disclosure is known to Company or, by exercising reasonable diligence, would have been known to Company, and Company shall be deemed to have knowledge of an impermissible use or disclosure if such impermissible use or disclosure is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the impermissible use or disclosure, who is a Workforce member of Company or an agent of Company (determined in accordance with the federal common law of agency).

10. Security Incident Reporting. Company shall report to Customer in writing any Security Incident involving Electronic PHI, other than a Security Incident that involves an actual or suspected impermissible use or disclosure of PHI reported pursuant to Section 9, within 30 days of Company's discovery thereof. The parties acknowledge and agree that this Section constitutes notice by Company to Customer of the ongoing occurrence of events that may constitute Security Incidents but that are trivial, routine, do not constitute a material threat to the security of PHI, and do not result in unauthorized access to or use or disclosure of PHI (such as typical pings and port scans) for which no additional notice to Customer shall be required.

11. Mitigation. To the extent possible, Company shall establish reasonable procedures to mitigate, to the extent practicable, any harmful effect of any Breach or impermissible use or disclosure of PHI in violation of the terms and conditions of this Agreement or applicable law.

12. Access and Amendment. With respect to an Individual as to whom Company maintains PHI, Company shall notify Customer promptly upon receipt of a request from such an Individual for access to or a copy of such Individual's PHI or to amend such Individual's PHI. To the extent permitted under HIPAA, and except as otherwise required upon the order of a court of competent jurisdiction, (i) Company shall direct such Individual to make such request of Customer and (ii) Company shall not consent to such access, deliver such copy, or comply with such request except as directed by Customer. With respect to PHI maintained by Company in a Designated Record Set, to the extent required by HIPAA of a Covered Entity, Company shall (i) make available PHI to Customer, as reasonably requested by Customer and in accordance with HIPAA, and (ii) upon receipt of notice from Customer, promptly amend any portion of the PHI so that Customer may meet its amendment obligations under HIPAA.

13. Accounting for Disclosures. Company shall document all disclosures of PHI by Company and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA. Company shall maintain such information for the applicable period set forth in HIPAA. Company shall deliver such information to Customer or, upon Customer's request, to the Individual, in the time and manner reasonably designated by Customer, in order for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA.

14. Audit. If Company receives a request, made on behalf of the Secretary of the Department of Health and Human Services, that Company make its internal practices, books, and records relating to the use or disclosure of PHI available to the Secretary of the Department of Health and Human Services for the purposes of determining Customer's or Company's compliance with HIPAA, Company promptly shall

notify Customer of such request and, unless enjoined from doing so by order of a court of competent jurisdiction in response to a challenge raised by Customer or Company (which challenge Company shall not be obligated to raise), Company shall comply with such request to the extent required of it by applicable law. Nothing in this Agreement shall waive any attorney-client privilege or other privilege applicable to either party.

15. Compliance with Law. Company shall comply with all applicable federal and state laws regarding individually identifiable information contained in or associated with PHI, including without limitation any state data breach laws or other state laws regarding the protection of such information. Nothing in this Agreement shall be construed to require Company to use or disclose PHI without a written authorization from an Individual who is the subject thereof, or written authorization from any other person, where such authorization would be required under federal or state law for such use or disclosure.

15.1. **Judicial and Administrative Proceedings.** In the event Company receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, if not prohibited by law, Company shall notify Customer in writing prior to responding to such request to enable Customer to object, move to quash or seek a protective order as it deems appropriate. Company shall notify Customer of the request as soon as reasonably practicable, but in any event within five (5) business days of receipt of such request. If Company is required to produce records pursuant to such a subpoena, order or discovery demand, the Customer shall be reimburse Company for all costs associated with the production.

16. Obligations of Customer. Customer shall (i) notify Company of any limitation in Customer's Notice of Privacy Practices to the extent that such limitation may affect Company's use or disclosure of PHI, (ii) notify Company of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change may affect Company's use or disclosure of PHI, (iii) notify Company of any restriction on the use or disclosure of PHI to which Customer has agreed in accordance with HIPAA, to the extent that such restriction may affect Company's use or disclosure of PHI, and (iv) obtain any authorization or consents as may be Required By Law for any of the uses or disclosures of PHI.

17. Term and Termination. This Agreement shall become effective on the Effective Date and shall continue in effect until the earlier to occur of (i) the expiration or termination of the Services Agreement or (ii) termination pursuant to this Section. Either party may terminate this Agreement and the Services Agreement effective immediately if it determines that the other party has breached a material provision of this Agreement and failed to cure such breach within 30 days of being notified by the other party of the breach. If the non-breaching party reasonably determines that cure is not possible, such party may terminate this Agreement and the Services Agreement effective immediately upon written notice to other party.

18. Effect of Termination.

18.1. Upon termination of the Services Agreement, subject to any applicable provisions of the Services Agreement, Company shall return to Customer or destroy all PHI that Company maintains in any form and retain no copies of such PHI or, if return or destruction is not feasible (including without limitation if Company is required by applicable law to retain any such PHI for a time following termination), notify Customer thereof and extend the protections of this Agreement to the PHI and limit its further use or disclosure to those purposes that make the return or destruction of the PHI infeasible. The requirements of this Section shall survive termination or expiration of this Agreement and shall be in force as long as any PHI remains in the custody or control of Company

18.2. As specified in this Agreement, Company will produce records in an industry standard format, any specific format requests may result in additional charges to Customer.

19. Miscellaneous.

19.1. **Notices.** Except as otherwise provided in this Agreement, notices and reports given under this Agreement shall be in writing and sent to Company at **2429 Military Road, Suite 300, Attn: Privacy Officer, Niagara Falls, NY 14304** and to Customer at the address set forth in the Services Agreement. Such notices shall be deemed delivered (i) when personally delivered, (ii) on the third business day after deposit, properly addressed and postage pre-paid, when sent by certified or registered U.S. mail to the address provided herein, or (iii) on the next business day when sent with next-business-day instruction by recognized overnight document delivery service to the address provided herein.

19.2. **Nature of Relationship.** Company shall perform all services hereunder as an independent contractor to Customer, and nothing contained herein shall be deemed to create any agency or other relationship between the parties or any of their affiliates. Neither party shall have the right, power, or authority under this Agreement to create any duty or obligation on behalf of the other party.

19.3. **Waiver.** A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of, any right or remedy as to subsequent events.

19.4. **Severability.** If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable would be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling, and/or the controlling principle of law or equity leading to the ruling, subsequently is overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

19.5. **Entire Agreement.** This Agreement, together with the Services Agreement, constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein.

19.6. **Amendments.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties; provided, however, that upon the enactment of any law or regulation affecting the use or disclosure of PHI, or on the publication of any decision of a court of competent jurisdiction relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation. Customer may, by written notice to Company, propose to amend this Agreement in such a manner as Customer reasonably determines necessary to comply therewith, and such proposed amendment shall become operative unless Company rejects such amendment by written notice to Customer within 30 days thereafter, in which case, unless the parties agree on an amendment within 30 days after Company's notice, either party may terminate this Agreement by written notice to the other.

19.7. **No Third Party Beneficiaries.** No provision of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns

of the parties, any rights, remedies, obligations, or liabilities whatsoever, and any implication to the contrary is expressly disclaimed by each party.

19.8. Headings; Interpretation. The headings of the sections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement. In the event of a conflict between the provisions of this Agreement and any provisions of the Services Agreement, the provisions of this Agreement shall control. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of HIPAA, as amended, or its interpretation by any court or regulatory agency with authority over either party hereto, HIPAA (interpreted by such court or agency, if applicable) shall control. Where provisions of this Agreement are different from those mandated under HIPAA, but are nonetheless permitted by such rules as interpreted by relevant courts or agencies, the provisions of this Agreement shall control.

IN WITNESS WHEREOF, Company and Customer have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

COMPANY:

CUSTOMER:

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____