



## COUNTY COMMISSION

BALDWIN COUNTY  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507  
(251) 580-2564  
(251) 580-2500 Fax  
agary@baldwincountyal.gov  
www.baldwincountyal.gov

ANU GARY  
Records Manager  
MONICA E. TAYLOR  
Assistant Records Manager

March 10, 2017

Mr. Michael Molyneux, President  
Symbol Health Solutions, LLC  
3765-A Government Boulevard  
Mobile, Alabama 36693

**RE: Agreement between the Baldwin County Commission and Symbol Health Solutions, LLC for Employer Sponsored Near-Site Clinics and Health Management**

Dear Mr. Molyneux:

Enclosed is a **fully executed copy** of the *Agreement* approved during the February 21, 2017, Baldwin County Commission meeting with Symbol Health Solutions, LLC for employer-sponsored health care clinics and health management programs for employees who are enrolled in Baldwin County Commissions' health plan.

The term of this *Agreement* shall be for three (3) years commencing on the first day that Symbol provides services to a member pursuant to the *Agreement*, or May 1, 2017, whichever is earlier. Unless either Baldwin County or Symbol provides written notice of non-renewal to the other party at least sixty (60) calendar days prior to the end of the initial term or of any renewal term, this *Agreement* shall be automatically renewed for additional two (2) year periods, subject to acceptable changes in remuneration for any renewal periods.

If you have any questions or need further assistance, please do not hesitate to contact Ron Cink, County Administrator/Budget Director, at (251) 580-2550.

Sincerely,

ANU GARY, Records Manager  
Baldwin County Commission

AG/met Item BA6

cc: Ron Cink

ENCLOSURE

RECEIVED  
MAR 01 2017  
BY: BV

**Symbol® CareClinic™ SERVICES AGREEMENT**

Baldwin County, Alabama, a political subdivision of the State of Alabama, by and through the Baldwin County Commission ("County"), and Symbol Health Solutions®, L.L.C. ("Symbol"), an Alabama limited liability company, agree as follows:

**Recitals**

Symbol is in the business of providing employer-sponsored health care clinics and health management programs conveniently located for those employer's employees who are enrolled in their employers' health plans. At the time this Agreement is executed, Symbol operates such clinics and programs for the Cities of Foley, Gulf Shores, and Orange Beach and for privately-owned businesses in Jefferson, Mobile, and other counties. County desires to engage Symbol to establish and operate clinics in Bay Minette, Robertsdale, Fairhope, and Foley to provide such health care and coaching for County's employees who are enrolled in County's health plan ("Plan") and such employees' covered spouses and dependents ("Members"). The terms of this engagement are set forth below.

**ARTICLE I  
SERVICES, FACILITY, EQUIPMENT & INSURANCE**

1.1. **Clinic Services.** Symbol shall, at its sole expense, provide a staff of medical professionals (the "Medical Staff") to provide episodic primary and preventive care (PC) to its Patients and Participants, on a non-surgical, non-emergency, episodic and routine basis. The Medical Staff shall, at a minimum, consist of a board-certified physician (the "Physician") a physician assistant(s), nurse practitioner(s), registered nurses, medical assistants, and clerical /administrative personnel. Members of the Medical Staff shall at all times during the term of this Agreement be appropriately licensed by the State of Alabama as required by its respective governing bodies. The Physician shall serve as Medical Director of the Clinic and shall supervise all non-physician members of the Medical Staff. Symbol shall also appoint a Clinic Director for each clinic who shall be Symbol's primary liaison with County and who shall report directly to County's designee regarding day to day management of the Clinic. In its discretion and subject to any policies adopted by the County, County may allow Members to visit the clinic during normal working hours without clocking out or incurring any charges for paid-time-off.

1.2. **Health Management Program.** Subject to applicable laws, rules and regulations, County shall make past and current health claims data available as requested by Symbol. Symbol, through its Symbol Care™ Health Management Program, shall analyze data obtained through onsite screenings and Plan's past claims data to stratify Member's health risks. Symbol shall provide year-round preventive services (PS) by utilizing clinical and behavioral coaching for such Participants identified as having elevated risks for future claims. County, in its discretion, agrees to provide appropriate incentives to Participants, which may include allowing Participant to receive PS without clocking out, and shall otherwise encourage Participants to attend PS sessions. Symbol shall produce aggregate reports to ascertain the Program's success utilizing

clinical parameters and claims' data analysis and shall deliver such reports to County on an annual basis and at other times as requested by County. A "Participant" shall be defined as an employee or spouse who 1) has undergone a biometric screening, 2) was assigned a risk level by Symbol based on certain health factors, and 3) engages in coaching sessions or other health activities made available as alternatives.

13. **Onsite Medication Dispensing.** Subject to Alabama laws and regulations and based upon the past utilization of medications derived from an analysis of the County's claims data, the County's then current formulary, and feedback from County, Symbol shall order pre-packaged medications to be dispensed from the Clinic by the Medical Staff to Patients based upon the Medical Staff's prescription for such medications. Symbol shall assure that adequate inventory of such medications is on hand to meet the anticipated demand ("Medicine Inventory") for medications to be dispensed at the Clinic.

14. **Off-site Laboratory Testing.** Certain laboratory tests ordered by the Medical Staff shall be performed by an offsite, qualified laboratory selected by Symbol, and others, such as "rapid tests" shall be performed onsite by the Medical Staff. The Medical Staff at the Clinic will perform the collection of testing samples prior to sending such samples to such offsite, qualified laboratory. Once the testing is complete, reports will be made available to the Patients for their own use and/or made available through referral to other physicians, if requested by a Patient. The Medical Staff will provide explanations of test results as requested by the Members and/or as deemed necessary by the Medical Staff.

15. **Physical Facilities.**

(a) Bay Minette, Fairhope, and Robertsdale: County will, at its expense, provide Symbol with clean, safe, accessible, legally compliant, attractive, and reasonably convenient facilities for Clinics in Bay Minette, Fairhope, and Robertsdale for Symbol's use to service the Members and such other groups of people or agencies as authorized by the County, in its sole discretion. Symbol acknowledges that not all of these facilities will be ready for opening at the same time, but County will use its commercially reasonable best efforts to open them with reasonable dispatch, which will be determined by the County, in its sole discretion. County shall be responsible for providing regular janitorial service, utilities, landscaping (including sidewalks), telephone, internet access with a minimum download speed of 10 mbs and upload speed of 2 mbs, and any other physical features reasonably requested by Symbol for the operation of the Clinics at such facilities, as deemed necessary by the County, in its sole discretion. Symbol will be responsible for the handling and disposal of any and all materials subject to any regulatory rules or guidelines, including the disposal of any and all medical waste or other medical materials. Symbol shall be solely responsible for implementing appropriate safeguards to secure all medications and medical records located in the Clinic.

(b) Shared Clinics: So long as the Cities of Foley, Orange Beach, and Gulf Shores allow Symbol to render Services under this Agreement at those Cities' respective Clinics, County shall not be required to provide facilities in this Cities, but if any of those facilities cease to be available for County's employees and County desires to have a Clinic in that vicinity, in the County's sole discretion, then County will have the same obligations for such desired facilities as

it does for the other Clinics as set forth in subparagraph (a) above. Additionally, so long as Symbol operates a Clinic at the Festival Center in Mobile, such Clinic shall be available for County's Members under this Agreement.

1.6. **Medical Equipment, Disposable Medical Supplies, and Furnishings.** Symbol, at its sole expense, shall provide all medical equipment, furniture and fixtures necessary to operate the Clinics. Symbol shall be responsible for ordering and maintaining adequate amounts of disposable medical supplies used at the Clinic for County Members, but County shall reimburse Symbol, on a cost pass through basis, all costs of supplying such disposable medical supplies to County Members.

1.7. **Scheduling of Services.** Services shall be available at the Clinic on a schedule that accommodates the County's work calendar with proposed initial hours of operation being 8:00 A.M. to 5:00 P.M., Monday through Friday, subject to mutually approved adjustments to maximize utilization. Scheduling will be made by appointment and, to the extent that space on the schedule is available, walk-ins will be accommodated. Appointments will be made using twenty-minute time slots.

1.8. **Standards of Medical Staff Performance.** Symbol covenants as follows:

(a) The members of the Medical Staff shall perform all medical services in a manner consistent with all applicable laws and regulations and in a professional manner consistent with accepted standards of medical care prevailing in the local medical community at the time of treatment. The Physician shall supervise the performance of the medical services provided by the Medical Staff in a manner consistent with all applicable laws and regulations.

(b) Medical Staff shall comply with all applicable laws and regulations with respect to the licensing and the regulation of physicians, the privacy of patients, any other rights of patients or the practice of medicine, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as applicable, and any other laws relating to employment matters and environmental safety.

(c) Physician shall maintain, during the term of this Agreement, appropriate credentials including:

1. A duly issued and active license to practice medicine and prescribe and dispense medications in the State of Alabama;
2. A good standing with his or her profession and state professional association;
3. The absence of any license restriction, revocation, or suspension;
4. The absence of any involuntary restriction placed on his or her federal DEA registration; and

5. A duly issued and active Registration or Collaborative Agreement for the Physician for the oversight of Medical Staff members, as necessary.

(d) All non-physician members of Medical Staff shall maintain, during the term of this Agreement, appropriate credentials including:

1. A duly issued and active license to practice his or her specific category of medical provider in the State of Alabama if allowed by law for his or her specific medical provider category to prescribe and dispense medications in the States of Alabama;

2. A good standing with his or her profession and state professional association;

3. The absence of any license restriction, revocation, or suspension;

4. The absence of any involuntary restriction placed on his or her federal DEA registration, if applicable; and

5. A duly issued and active Registration or Collaborative Agreement covering all services provided to Members by the non-physician Medical Staff member, as necessary.

(e) Symbol shall immediately remove and promptly replace any member of the Medical Staff who has his or her Professional license restricted, revoked or suspended, has committed or is charged with the commission of a felony, is no longer in good standing with his or her professional or state licensing authority or is denied or loses professional liability insurance coverage.

(f) Symbol further agrees to notify County promptly in writing if any Medical Staff member becomes subject to any material litigation, investigation or regulatory proceeding with regard to medical malpractice or any other medical regulatory issues.

1.9. **Insurance.**

(a) Symbol shall maintain, throughout the term of this Agreement, professional liability insurance covering the errors and omissions of the Medical Staff with a carrier rated at least A- or better by A.M. Best in the minimum annual coverage amounts of \$1,000,000.00 per occurrence and \$3,000,000.00 aggregate. Symbol shall provide County proof of such professional liability insurance maintained by the Medical Staff in accordance with paragraph (c) below.

(b) Symbol shall, at its own cost and expense obtain and maintain in full force and effect, during the term of this Agreement, with a carrier rated at least A- or better by A.M. Best, the following insurance coverage: (i) workers' compensation insurance as required by the law of the State of Alabama; and (ii) commercial general liability insurance with a

\$1,000,000 per occurrence and a \$3,000,000 general aggregate

(c) Concurrent with the execution of this Agreement, Symbol shall have provided County with certificates of insurance evidencing the coverage required by this Section 1.9. above. The certificates shall provide thirty (30) days written notice of cancellation or nonrenewal of the coverages named in said certificates. The County will be named as an additional insured under Symbol's general liability insurance.

(d) Any subcontractors or other independent contractors of Symbol hired to provide or assist with any of the services contemplated by this Agreement shall be covered under the foregoing insurance policies, or such subcontractor or other independent contractor shall provide written proof to Symbol and County of such subcontractor's or independent contractor's insurance coverage meeting the foregoing requirements that will evidence waivers of subrogation in favor of Symbol and the County and be made available upon request.

1.10. **Relationship of Parties.**

(a) Symbol and County are independent of one another in the performance of this Agreement and shall not be considered or permitted to be an agent, servant, joint venture or partner of the other. All persons furnished, used, retained or hired by or on behalf of Symbol shall be solely the employees or agents or designees of Symbol. Symbol agrees that it (i) is responsible for payment of any and all unemployment, social security, and other payroll taxes for its employees and agents, as applicable, including any related assessments and contributions required by law; and (ii) will assure by contractual provisions that any subcontractors and/or their designees shall provide that they shall be solely responsible for payment of any and all applicable unemployment, social security, and other payroll taxes for their employees and agents, to the same extent as set forth in (i) from this same paragraph.

(b) Symbol and its employees shall abide by, and Symbol shall cause its contractors to agree to abide by, any and all federal and state laws in connection with any regulated employment practices throughout the term of this Agreement and shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin.

(c) The Physician shall be solely responsible for his or her actions and/or omissions, as well as the actions and/or the omissions of any agent or any employee used by such Physician in connection with providing the Medical Services contemplated by this Agreement. Neither County nor Symbol shall have any control or involvement in the independent exercise of medical judgment by the Physician and/or any nurse or other Health Professional.

(d) Symbol hereby agrees to indemnify, defend, and hold harmless the County, its officials, representatives, agents, servants, and employees, from and against any and all claims, losses, damages, expenses, attorney fees, demands, suits and causes of action of every kind and character and all other liabilities (collectively, "claims") arising out of or in any way incident to, related to or in connection with (i) breach of any representation, warranty, covenant or agreements set forth in this Agreement, (ii) the provision of services contemplated by this Agreement, (iii) any claim of wrongdoing or action or inaction by a Physician or Medical Staff

members or (iv) anything related to the activities at the Clinic except to the extent such Claim arises from the negligent actions or inactions of County which are not within Symbol's reasonable control.

1.11. **Other Licensed Health Professionals.** County agrees and acknowledges that Physician will have other Health Professionals, as defined in the next sentence, assist the Medical Staff and/or replace the Physician during his or her regularly scheduled time at the County's place of business. "Health Professional" shall mean a duly licensed medical doctor, licensed physician's assistant or licensed nurse practitioner.

1.13 **Medical Records.**

(a) Symbol shall maintain all medical records, x-rays or other imaging materials, slides, and medical data records relating to patients of the clinic (the "Records") with respect to all of the patients and shall maintain such Records in a professional manner consistent with the accepted standards of medical practice and in compliance with HIPAA privacy and security standards. All Records maintained by Symbol in connection with this Agreement, except as otherwise provided by law, shall be the sole property of the Medical Staff and Symbol. However, the County shall be entitled to use all statistical data, reports and aggregate information generated pursuant to this Agreement as it deems necessary.

(b) Symbol shall retain the Records relating to each patient for the following described periods:

1. In the case of any patient who is at least eighteen (18) years of age as of the effective date hereof, five (5) years from the anniversary date of the last patient encounter (or any longer period hereafter required by applicable state or federal law);

2. In the case of any patient who is under the age of eighteen (18) years of age as of the effective date hereof, until the patient has reached an age of twenty-one (21) years, or five (5) years from the anniversary date of the last patient encounter, whichever is later (or any longer period hereafter required by applicable state or federal law); and

3. After the expiration of the applicable time period described in clauses (1) and (2), Symbol shall dispose of the Records in a manner maintaining patient confidentiality and in accordance with applicable laws and regulations and standards of professional ethics governing the disposition of patient medical records

(c) Symbol shall, and shall require all its employees, subcontractors and agents to, comply with and recognize all confidentiality and non-disclosure requirements that apply to the County and the Plan, specifically including the privacy and security requirements of HIPAA, and the regulations promulgated thereunder and applicable state requirements. Symbol shall comply with the policies adopted by the County and Plan for access to and disclosure of protected health information (as defined in HIPAA) and the Business Associate Agreement provisions attached and incorporated herein as Exhibit A.

## ARTICLE II COMPENSATION

2.1. **Monthly Payments.** At the end of each calendar month, Symbol shall invoice County for all charges owed to Symbol for such month, and County shall pay such amount via ACH not later than twenty-one (21) days after such invoicing. Charges shall include \$89 per PC Encounter for such month and the charges for the items listed in Sections 2.2, 2.3, 2.4 2.5, and 2.6 below.

2.2. **Prescription Medication Dispensing Fee.** County shall pay Symbol for medications purchased to supply the Medicine Inventory for subsequent dispensing through the Clinic to County Members at a rate not to exceed the then existing rates provided the County's pharmacy benefit manager.

2.3. **Injectable Medication Fee.** County shall reimburse Symbol for injectable medications at Symbol's cost, plus a 15% handling fee.

2.4. **Lab and Patient-Specific Disposable Medical Supplies.** County shall reimburse Symbol for all fees associated with lab tests and disposable medical supplies purchased for County's Members. Such reimbursement shall be a cost pass-through plus a 15% handling fee.

2.5. **Annual Health Risk Screenings.** County shall pay Symbol all fees agreed upon, in advance, with the County associated with the annual health risk screenings on a cost pass-through basis. County acknowledges that costs associated with each screening are dependent upon the logistics, numbers of hours, and quantity of people screened.

2.6. **Health Management Fee:** County shall pay Symbol an amount equal to \$23 per Participant per month, as herein defined, per month for services related to its Health Management program. Participant is defined as any employee or spouse Member of the County's health plan who is required to participate in Symbol's health coaching services to receive any incentives offered by the County.

2.7. **Access and Audit.**

(a) Subject in all respects to applicable patient privacy laws and regulations, throughout the term of this Agreement, County shall have the right to enter the Clinic at all times upon reasonable advance notice to Symbol.

(b) Subject in all respects to applicable patient privacy laws and regulations, throughout the term of this Agreement, Symbol shall provide to County, upon County's reasonable request, supporting documentation to enable County to verify the number of Encounters and the dispensation/injection of medicines for which Symbol bills County.



### ARTICLE III TERM AND TERMINATION

3.1. **Agreement.** This Agreement shall be for a term of three (3) years commencing on the first day that Symbol provides services to a Member pursuant to this Agreement or May 1, 2017, whichever is earlier. Unless either County or Symbol provides written notice of non-renewal to the other party at least sixty (60) calendar days prior to the end of the initial term or of any renewal term, this Agreement shall be automatically renewed for additional two-year periods, subject to mutually acceptable changes in remuneration for any renewal periods.

3.2. **Termination for County Default.** Symbol may, in addition to its other rights, terminate this Agreement if County shall default under this Agreement and fail to cure such default (a) within fifteen days (15) days after written notice thereof of a payment-related default or (b) within forty-five (45) days after written notice thereof of any other default, but no such termination shall relieve County of any amounts then due Symbol under this Agreement.

3.3. **Termination by County.** County may terminate this Service Agreement if Symbol shall default under its obligations under this Agreement and fails to cure such default within thirty (30) days of written notice of such default. In addition, the County shall have the right to terminate this Agreement, with or without cause or hearing, by giving ninety (90) days written notice to Symbol. In the event the County terminates this Agreement without cause, the County shall pay Symbol a separation fee in an amount equal to two months payments based on the average monthly payments made by the County for the previous twelve months. The separation fee will be paid and prorated as follows: (1) if the termination without cause occurs in the first year of the term, the County shall pay an amount equal to two months payments as set forth above; (2) if the termination without cause occurs in the second year of the term, the County shall pay an amount equal to 66.66% of the two months payments as set forth above; and (3) if the termination without cause occurs in the third year of the term, the County shall pay an amount equal to 33.33% of the two months payments as set forth above. The County shall not be required to pay any other amounts, fees or costs related to the termination of this Agreement.

3.4 **Effect of Expiration or Termination.** The expiration or the termination of this Agreement shall not affect the obligation of the County to pay compensation to Symbol for outstanding invoices to Symbol for the period prior to such expiration or termination and shall not affect the obligation of Symbol to provide monthly reports for the period prior to the effective date of such expiration or such termination.

3.5 **No Engagement of Medical Staff.** In the event of any termination of this Agreement, for a period of one (1) year following the effective date of the termination of the Agreement, County shall not hire or engage the onsite professional healthcare services of the members of the Medical Staff providing services pursuant to this Agreement at the time of such termination.

**ARTICLE IV  
MISCELLANEOUS**

4.1. **Notice.** All notices and other communications permitted or required pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement or to such other address as the party may designate from time to time in accordance with this Section 4.1. All notices and other communications shall be (a) mailed by certified or registered mail, return receipt requested, postage pre-paid, (b) personally delivered or (c) sent by a nationally recognized overnight courier. Notices mailed pursuant to this Section 4.1 shall be deemed given as of three days after the official U.S. Postmark date and notices personally delivered shall be deemed given at time of receipt. Notices sent by telecopy with receipt confirmation shall be deemed received one day thereafter.

If by Mail to County: T. Christopher Elliott, Chairman  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507

If by Mail to Symbol: Michael G. Molyneux, President/CEO  
3765-A Government Blvd.  
Mobile, Alabama 36693

4.2. **Entire Agreement.** This Agreement constitutes the entire agreement between the County and Symbol with respect to the subject matter hereof and supersedes all prior agreements. This Agreement shall not be amended or waived, in whole or in part, except in writing signed by both the County and Symbol.

4.4 **Governing Law.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Alabama, without giving effect to its conflict of laws provisions.

4.5 **Binding Agreement and Assignment.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties to it and their respective legal representatives, successors and assigns. No party may assign this Agreement nor any rights hereunder, nor may they delegate any of the duties to be performed hereunder without the prior written consent of the other party, which such consent shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, County and Symbol have executed and delivered this Agreement as of the date first above written.

**Baldwin County, Alabama**

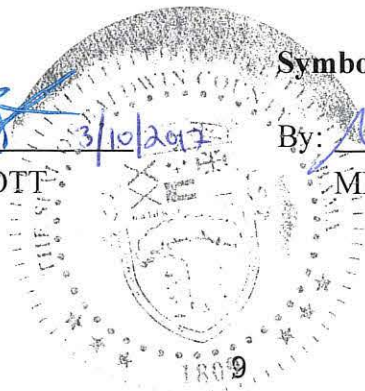
**Symbol Health Solutions, LLC**

By: 

T. CHRISTOPHER ELLIOTT  
As Its Chairman

By:  2/27/17

MICHAEL G. MOLYNEUX, Manager



Attest:

By: Ronald J. Cink  
RONALD J. CINK  
As Its: County Administrator

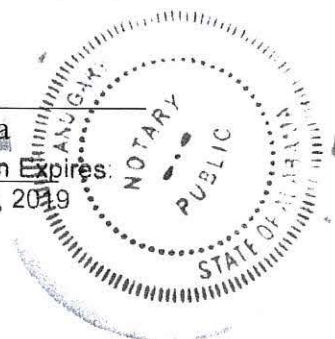
STATE OF ALABAMA

COUNTY OF BALDWIN

I, Anu Gary, a Notary Public, in and for said County in said State, hereby certify that T. CHRISTOPHER ELLIOTT, whose name as Chairman of the Baldwin County Commission, and RONALD J. CINK, whose name as County Administrator/Budget Director, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said county commission.

Given under my hand and seal this 10th day of March, 2017.

Anu Gary  
Notary Public, Baldwin County, Alabama  
My Commission Expires: My Commission Expires:  
October 12, 2019



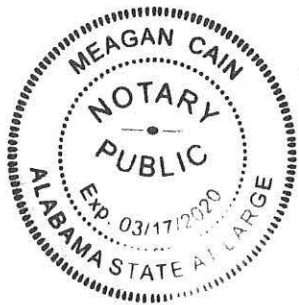
STATE OF ALABAMA

COUNTY OF Mobile

I, Meagan Cain, a Notary Public, in and for said County in said State, hereby certify that MICHAEL G. MOLYNEUX, whose name as Manager of SYMBOL HEALTH SOLUTIONS, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this 7 day of March, 2017.

Meagan Cain  
Notary Public, Mobile County, Alabama  
My Commission Expires: 3/17/2020



# Exhibit "A"

## BUSINESS ASSOCIATE AGREEMENT

This Agreement ("Agreement") is made and entered into this 14<sup>th</sup> day of February, 2017, by and between Symbol Health Solutions ("Business Associate"), an Alabama Limited Liability Corporation, whose business address is 3765-A Government Boulevard, Mobile, AL 36693, and Baldwin County, Alabama ("Covered Entity"), whose business address is 312 Courthouse Square, Bay Minette, Alabama, 36507.

1. **Definitions.** Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in the Privacy Rule and the Security Rule.
  - a. **Business Associate.** "Business Associate" shall mean Symbol Health Solutions.
  - b. **Covered Entity.** "Covered Entity" shall mean the Baldwin County, Alabama.
  - c. **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR §[160.103](#) and shall include a person who qualifies as a personal representative in accordance with 45 CFR §[164.502\(g\)](#).
  - d. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
  - e. **Protected Health Information.** "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR §[160.103](#), limited to the information created or received by Business Associate from or on behalf of Covered Entity.
  - f. **Required by Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §[164.103](#).
  - g. **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
  - h. **Security Rule.** "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts §160 and §164, subparts A and C.
2. **Obligations and Activities of Business Associate.**
  - a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
  - b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity, as provided for in the Security Rule.
  - c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
  - d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Business Associate also agrees to report to Covered Entity any security incident, including all data breaches whether internal or external, related to Protected Health Information of which Business Associate becomes aware.
  - e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
  - f. Business Associate agrees to provide access, at the request of Covered Entity and during normal business hours, to Protected Health Information 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](#), provided that Covered Entity delivers to Business Associate a written notice at least five (5) business days in advance of requesting such access. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information in a Designated Record Set of Covered Entity.
  - g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §[164.526](#), at the request of Covered Entity or an Individual. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a Designated Record Set of Covered Entity.

- h. Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use or disclosure of Protected Health Information 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 or Security Rule. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.
- i. Business Associate agrees to maintain necessary and sufficient documentation of disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of such disclosures, in accordance with 45 CFR §[164.528](#).
- j. On request of Covered Entity, Business Associate agrees to provide to Covered Entity documentation made in accordance with this Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §[164.528](#). Business Associate shall have a reasonable time within which to comply with such a request from Covered Entity and in no case shall Business Associate be required to provide such documentation in less than five (5) business days after Business Associate's receipt of such request.
- k. Except as provided for in this Agreement, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate will redirect the Individual to the Covered Entity.

### **3. Permitted Uses and Disclosures by Business Associate.**

- a. Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such use or disclosure would not violate the Privacy Rule if done by Covered Entity. All other uses or disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.
- b. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §[164.504\(e\)\(2\)\(i\)\(B\)](#).
- e. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §[164.502\(j\)\(1\)](#).

### **4. Obligations of Covered Entity.**

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §[164.520](#), to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §[164.522](#), to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

### **5. Term and Termination.**

- a. Term. The Term of this Agreement shall be effective as of 14<sup>th</sup> day of February, 2017, and shall terminate when all of the Protected Health Information 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 Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Agreement.

- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
  - 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy, as approved or directed by the Covered Entity, all Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

**6. Miscellaneous.**

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule 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 the requirements of the Privacy Rule or Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
  - c. Survival. The respective rights and obligations of Business Associate under Section 5(c) of this Agreement shall survive the termination of this Agreement.
  - d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule or the Security Rule.
7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original Agreement. Facsimile signatures shall be accepted and enforceable in lieu of original signatures.

APPROVED AND ACCEPTED BY:

  
 Symbol Health Solutions, LLC

2/27/17  
 Date

  
 Baldwin County, AL

3/10/2017  
 Date

