

## PARTICIPANT ACCESS AGREEMENT (EMS)

This Participant Access Agreement (the "Agreement") is entered into and made effective as of the last date of the Parties to sign (the "Effective Date"), by and between [REDACTED] (the "Participant") a Michigan [REDACTED], located at [REDACTED] and the Ohio Health Information Partnership, Inc., an Ohio nonprofit corporation, located at 3455 Mill Run Drive, Suite 315, Hilliard, Ohio 43026 ("Company") (each a "Party" and collectively the "Parties").

This Agreement establishes the terms under which Company will provide Participant with access to CliniSync as follows. THE PARTIES HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT, INCLUDING THOSE TERMS CONTAINED ON THE FOLLOWING PAGES HEREOF, AS OF THE EFFECTIVE DATE.

- 1. CliniSync Permitted Uses.** Participant will use CliniSync exclusively for authorized purposes, which are limited to access and use of Data for Participant's treatment of its patients, and for payment for Participant's health care services and for the limited health care operations as described in paragraphs 1 and 2 of the definition of health care operations in 45 CFR 164.501, as permitted by Laws. All such permitted uses shall be consistent with this Agreement, all Applicable Laws, regulations and rights of others, and the Policies and Procedures.
- 2. Participants Responsibilities.** Participant will be solely responsible, at Participant's own expense, for acquiring, installing and maintaining all hardware, software and other equipment as may be necessary for Participant and Each Authorized User to connect to, access, or use CliniSync. Participant will be solely liable for any failure in its hardware, software, and other equipment, including any such failure resulting in Participant's breach of this Agreement, violation of Laws, or Participant's violation of Laws.
- 3. Data from Other Participants.** Data does not originate from Company. CliniSync will deliver, make available, and enable Participant's access to Data. Participant acknowledges and agrees that such Data is "as-is" and "as-available" and Company does not monitor the specific content or nature of any Data and is under no obligation to review any Data. Company's sole obligation with respect to the Data is to deliver, make available, or otherwise process Data, using Data provided to it by other participants. Without limiting any other provision of this Agreement, except as expressly stated in Section 8, Company will have no responsibility for or liability related to the accuracy, currency, completeness, content or delivery of any Data provided, accessed, or made available through CliniSync.
- 4. Technology.** As between Company and Participant, CliniSync and all Technology are and will remain the property of Company or its Vendors, contractors, and agents. Company reserves all right in and to the Technology and CliniSync not expressly provided or granted to Participant under this Agreement.
- 5. Term and Termination.**
  - 5.1. Term.** This Agreement will commence on the Effective Date and continue for a period of two (2) years ("Initial Term") and renew automatically thereafter for successive one (1) year additional terms, unless terminated as set forth below.
  - 5.2. Termination.** This Agreement may be terminated as follows:
    - a. By either Party following the end of the Initial Term, for any reason or no reason upon written notice to the other Party at least ninety (90) days prior to the expiration of the then current term;
    - b. By either Party if the other Party materially breaches any provision of this Agreement and fails to cure the breach within thirty (30) days after receiving notice thereof from the non-breaching Party.
- 6. Disclaimers.** EXCEPT AS EXPRESSLY STATED IN SECTION 9, CLINISYNC, INCLUDING WITHOUT LIMITATION, ANY DATA OR TECHNOLOGY, ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND COMPANY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OR CONDITIONS REGARDING CLINISYNC, INCLUDING WITHOUT LIMITATION, ALL DATA AND TECHNOLOGY WHETHER EXPRES OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR,

## PARTICIPANT ACCESS AGREEMENT (EMS)

COMPANY DOES NOT WARRANT THAT CLINISYNC WILL MEET PARTICIPANT'S EXPECTATIONS OR BE ACCURATE OR ERROR-FREE, UNINTERRUPTED OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE OR SYSTEM. COMPANY WILL NOT BE HELD RESPONSIBLE FOR ANY PROBLEMS WITH CLINISYNC ATTRIBUTABLE TO THE INTERNET OR PARTICIPANT'S OR ANY USER'S NETWORK OR ABILITY TO ACCESS THE INTERNET.

### 7. Additional Liabilities.

**7.1. Indemnification.** Company agrees to defend, indemnify and hold harmless Participant and its directors, officers, employees, agents, and Authorized Users (collectively "Indemnified Parties) against any third party claims that the Indemnified Parties use or possession of CliniSync as delivered by Company, infringes any U.S. copyright or U.S. patent or misappropriates any trade secret of any third party, and against all damages, awards, and cost (including but not limited to, legal fees and expenses) awards against the Indemnified Party in connection with such claims. As a condition of receiving such defense and indemnity, the Indemnified Parties shall promptly notify Company of any claim alleged to be covered by this provision, shall grant Company sole control and authority over the defense and settlement of such claim, and shall provide Company (at Company's expense) with all requested information and cooperation in such defense and settlement.

**7.2. Participant Data.** Participant will be responsible for all losses arising out of, or in any way related to, the Participant Data, the use of CliniSync by Participant or any Authorized User, or any actions taken or not taken by Participant or any Authorized User based on the use of CliniSync or any Data obtained through CliniSync, including, without limitation, any actions involving patient care, utilization management or quality management. Notwithstanding the foregoing, Participant will have no responsibility or liability with respect to any portion of any such Losses resulting from any act or omission of Company.

**8. Limitation of Liability.** IN ADDITION TO ANY OTHER LIMITATIONS OF LIABILITY IN THIS AGREEMENT, EXCEPT FOR ANY LIABILITY ARISING UNDER SECTIONS 3, 4, 7, 9 OR UNDER THE BUSINESS ASSOCIATE AGREEMENT, OR OUT OF ANY INFRINGEMENT BY A PARTY OF THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY: (1) NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE, ALLEGATIONS OF MEDICAL MALPRACTICE OR LIABILITY ARISING OUT OF DELIVERY OF, OR FAILURE TO DELIVER, MEDICAL CARE) AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, INCLUDING, WITHOUT LIMITATION, LOST REVENUE OR PROFITS, LOST DATA OR INFORMATION, COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES, OR INJURY TO REPUTATION OR OTHER ECONOMIC ADVANTAGE OR DISADVANTAGE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (2) EACH PARTY'S TOTAL CUMULATIVE LIABILITY RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO COMPANY BY PARTICIPANT UNDER THIS AGREEMENT UP TO THE DATE OF THE EVENTS GIVING RISE TO ANY SUCH LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY ARE INTENDED TO APPLY ONLY TO THE PARTIES TO THIS AGREEMENT AND EACH PARTY EXPRESSLY RETAINS ANY REMEDIES IT MAY HAVE UNDER THIS AGREEMENT OR UNDER APPLICABLE LAW WITH RESPECT TO ANY THIRD PARTY.

### 9. Confidentiality, Privacy, and Security.

**9.1. Applicable Laws.** Company and Participant will comply with the requirements of all Applicable Laws relating to the confidentiality, privacy, security, or other access or use of CliniSync or any Data AND Company Policies and Procedures.

**9.2. Additional Requirements.** In addition to and without limiting the other requirements of this Section 9:

**a. Patient Information.** Company and Participant will both comply with the requirements under applicable federal Laws for the confidentiality, security, privacy, or other access or use of patient information, including, without limitation, Protected Health Information ("PHI"), as defined in 45 CFR §160.103 as the same may be amended from time to time and including, without limitation, all written or electronic information relating to the diagnosis, treatment, tests, prognosis, admission, discharge, transfer,

## PARTICIPANT ACCESS AGREEMENT (EMS)

prescription or claims of any patient, or any other data or information implicitly or explicitly identifying any patient, to whom services are provided by Participant, which information is provided, stored or accessed through CliniSync.

- b. **State Laws.** Each Party will comply with the requirements under the applicable confidentiality and privacy Laws of the State of Ohio, including, without limitation, the following sections of the Laws of the State of Ohio as such may be amended, moved or otherwise enacted to address such matters from time to time: (i) ORC § 3701.17 – concerning the confidentiality of protected health information reported to or obtained by the Ohio Department of Health; (ii) ORC § 3701.243 – concerning the confidentiality of HIV test results or diagnosis; (iii) ORC § 3701.74 – concerning medical records in the care of health care providers; (iv) ORC § 5119.27 – concerning the confidentiality of drug and alcohol abuse records; (v) ORC § 5101.27 – concerning the confidentiality of medical information regarding public assistance recipients; (vi) ORC § 5122.31 – concerning the confidentiality of mental health records; and (vii) OAC 5160-26-03 – concerning confidentiality of medical information in the custody of a managed care plan.
- c. **Business Associate Agreement.** Company and Participant will comply with the terms of the Business Associate Agreement in the form entered into by Participant and Company as of the date of this Agreement. As necessary to comply with the Laws, the parties agree to enter into amendments of such Business Associate Agreement as necessary to fully comply with such Laws. Without limiting any obligation or requirement imposed by the Business Associate Agreement, Company and Participant represent, warrant, and covenant that each party will use and disclose any patient information, including, without limitation, any PHI solely for the purposes of exercising its rights and performing its obligations under this Agreement.
- d. **Confidentiality.** Except as to and to the extent required by law, neither party will disclose or use, and will direct its representatives not to disclose or use to the detriment of the other party, any Confidential Information (as defined below) furnished, or to be furnished, by a party (the "Disclosing Party") or their respective representatives, to the other party (the "Receiving Party") or its representatives, at any time or in any manner other than in connection with the performance of this Agreement. For purposes of this Section, "Confidential Information" means any information about the Disclosing Party identified in writing or orally as such to the Receiving Party by the Disclosing Party promptly following its disclosure, any proprietary information of the Disclosing Party, or any other information disclosed by a Disclosing Party to the Receiving Party, unless (a) such information is already known to the Receiving Party or its representatives, agents or employees or to others not bound by a duty of confidentiality at the time of its disclosure or such information becomes publicly available through no fault of the Receiving Party or its representatives; (b) the use of such information is necessary or appropriate in making any filing or obtaining any governmental consent or approval required for the performance of this Agreement; (c) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings, or (d) if such information is requested from Participant and Participant is subject to the Ohio Public Records law and there is no exception permitting the records to remain confidential. Upon the written request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party or destroy any Confidential Information in its possession and certify in writing to the Disclosing Party that it has done so.
- e. **Survival.** The terms of this Section 9 shall survive the expiration or earlier termination of this Agreement for a period of three (3) years; provided however that confidentiality obligations with respect to trade secrets and protected health information shall continue in perpetuity.

**10. Business Associate Access.** Participant and Company will comply with the following provisions related to Business Associate Access to Data:

- 10.1.** Medicount, Inc. is the Business Associate (BA), as defined in 45 C.F.R. 160.103. Participant wishes to designate BA as an Authorized User of Participant and allow BA to access Data through CliniSync as authorized under this Agreement.

**PARTICIPANT ACCESS AGREEMENT (EMS)**

- 10.2.** For purposes of this Agreement, BA shall only be authorized to receive Hospital Admission, Discharge, and Transfer Data (“ADT Data”) received from Hospital participants. Participant expressly authorizes BA to access such ADT Data on its behalf.
- 10.3.** Participant Represents and Warrants that it is permitted by law and has the authority to allow access to ADT Data to BA. Participant acknowledges and agrees that BA will not access or use ADT Data or Data through CliniSync other than on behalf of Participant, including but not limited to for use of data, the BA’s own purposes which is limited to billing.
- 10.4.** Any data transmitted by BA on behalf of Participant or Company is “Participant Data” under this Agreement.
- 10.5.** Participant agrees that BA is acting as an agent of and on behalf of Participant at all times when accessing or using data on behalf of Participant. Participant agrees and acknowledges that BA is an Authorized User of Participant under this Agreement and subject to all terms of this Agreement as an Authorized User.

**11. Choice of Law and Venue.** This Agreement will be governed by the Laws of the State of Ohio without regard to the conflicts of law principles thereof. Any action or proceeding arising from or relating to this Agreement must be brought exclusively in a state or federal court in Franklin County, Ohio, and each party irrevocably submits to the exclusive jurisdiction and venue of such courts. Each party agrees that it will only bring any action or proceeding arising from or relating to this Agreement in a federal court in Ohio or in state court in Franklin County, Ohio.

**12. Waiver.** No waiver by either Party of any breach of this Agreement will be a waiver of any preceding or succeeding breach. No waiver by either party of any right under this Agreement will be construed as a waiver of any other right.

**13. Severability.** If any provision of this Agreement will prove to be invalid, void, or illegal, such provision will in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions will remain in full force and effect.

**14. Compliance with law and Policies.** This Agreement and the rights and obligations of the parties hereunder are made subject to, and each party will at all times comply with all applicable: (a) Laws and (b) Company Policies and Procedures.

**15. Third-Party Beneficiaries.** There shall be no third-party beneficiaries of any Participation Agreement.

**16. Amendments.** This Agreement may not be modified except by an instrument in writing duly executed by the Parties.

**17. Entire Agreement.** This Agreement, when executed, and the Policies and Procedures constitute the entire understanding between the parties with respect to the subject matter of this Agreement.

**SIGNATURES**

**FOR PARTICIPANT:**

**FOR COMPANY:**

\_\_\_\_\_

Ohio Health Information Partnership, Inc.

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_