

TERMS OF SERVICE

Please read this carefully. It is a legal agreement between a Participating Entity, an Authorized User and Michigan Health Information Network Shared Services (the “**Network**”). No other terms of service apply to the activities described herein.

Participating Entity must ensure that each of its Authorized Users also agrees to these Terms prior to using the Services. The person agreeing to these Terms on behalf of Participating Entity warrants that s/he has authority to enter into these Terms on behalf of Participating Entity.

All capitalized terms have the meanings set forth below or as further set forth in the applicable Clinical Quality Metrics Registry Policies and Procedures (the “**CQMR Policies**”), Oregon Provider Directory Policies and Procedures (“**PD Policies**”), Clinical Quality Metrics Registry Participation Agreement (the “**CQMR Participation Agreement**”), or the State of Oregon Provider Directory Participation Agreement (the “**PD Participation Agreement**.” The CQMR Policies, CQMR Participation Agreement, PD Policies and PD Participation Agreement are referred to herein collectively as the “**Program Policies and Agreements**”.

Changes to Terms. As between the Network and Participating Entity, the Network may modify or amend these Terms by notifying the Oregon Health Authority, and the Oregon Health Authority will notify each Participating Entity. Participating Entity and Authorized Users will be deemed to have agreed to any such modification or amendment by continued use of the Services (as defined below) thirty (30) calendar days following the date the Oregon Health Authority notifies Participating Entity of the modified or amended Terms. As between the Network and Authorized Users, once accepted by Participating Entity, an Authorized User will be presented with modified or amended Terms and an Authorized User’s continued use of the Services is conditioned upon acceptance of such Terms.

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These Terms govern Participating Entity’s and Authorized Users’ use of certain Services, which may include computer software (including any online and electronic documentation) and associated media and materials. These Terms apply to updates, enhancements or other add-on components that the Network may provide or make available, unless the Network provides other terms with the update, enhancement or add-on component.

1. DEFINITIONS

1.1. Where the following terms appear in these Terms with initial capitalization, they have the meaning set forth below (it being understood that such following definitions extend, as and where applicable, both to plural and singular usages of such terms and to other grammatical forms of such terms):

“Applicable Laws and Standards” means all applicable federal, state, and local laws, statutes, acts, ordinances, rules, codes, standards, regulations and judicial or administrative decisions promulgated by any governmental agency, as any of the foregoing may be amended, modified, codified, reenacted, promulgated or published, in whole or in part, and in effect from time to time which is enforceable against a party. Without limiting the generality of the foregoing, “Applicable Laws and Standards” includes HIPAA, as defined below.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (the **“HITECH Act”**), and the regulations promulgated thereunder at 45 C.F.R. Parts 160 and 164, each as may be amended from time to time.

“HIPAA Addendum” means the business associate agreement as may be modified from time to time, included as Exhibit 1, the terms of which are incorporated herein by reference.

“Message Content” means, as applicable, Provider Data and/or CQM Data, each as defined in the CQMR Policies or PD Policies.

“Minimum System Requirements” means the minimum system requirements needed to access and use the Services, as may be modified from time to time, available at: <https://mihin.org/minimum-system-requirements/>, the terms of which are incorporated herein by reference.

“Services” means the services and functionality provided by the Network allowing the Participating Entity to send, receive, find, or use Message Content to or from the Network as further set forth in the applicable Program Policies and Agreements.

2. NETWORK SERVICES

2.1 Right to Use. The Network grants to Participating Entity and each of its Authorized Users a nonexclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to have access to and use the Services in accordance with these Terms. The parties agree that nothing in these Terms is intended to transfer or assign any ownership interest or rights to Participating Entity or Authorized Users. This license does not grant any rights to obtaining future upgrades, updates, enhancements, or supplements of the Services. If upgrades, updates, enhancements, or supplements of the Services are obtained, however, the use of such upgrades or updates is governed by these Terms and any amendments to it unless other terms accompany the upgrades, updates or supplements in which case those terms apply. Participating Entity and each of its Authorized Users may use the Services to send, receive, find, and use Message Content only for the Permitted Uses set forth in the applicable PD Policies and/or CQMR Policies.

2.2 Additional Restrictions. Participating Entity acknowledges and agrees that the Services constitute the trade secrets and confidential information of the Network and/or its service provider(s), if any. Participating Entity further acknowledges that the Services may be protected by copyright law and international treaty provisions. Participating Entity shall not permit any person under the control of Participating Entity other than Authorized Users to access and/or use

the Services. Participating Entity shall not, nor shall it permit any Authorized User or third party, over which it exercises control, to duplicate, modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based on the Services. The Services shall not be copied or incorporated into any other computer program, hardware, firmware or product, except as specifically provided for under these Terms.

2.3 **Archiving.** The Network may archive Message Content for audit, trending, regulatory compliance, and quality control purposes.

2.4 **Enrichment.** Network may enrich Message Content for the purpose of standardizing and simplifying the ability of others to use it but Network will not modify the underlying data.

2.5 **Retransmitting Messages.** If there is a Service interruption, then Message Content and any notices queued during the Service interruption will be retransmitted as soon as practicable upon such Service interruption ending. When Participating Entity is sending CQM Data to the Services, Participating Entity shall resend, or make provisions to have resent, queries, notices, and Message Content, as applicable, to the Services, which (i) Participating Entity failed to successfully send to the Services for any reason, including failure to meet the obligations in Section 2.7. In the event a query to find Message Content is no longer needed by the Participating Entity, the retransmission may be done at Participating Entity's option.

2.6 **Troubleshooting and Support.** Participating Entity and its Authorized Users will report any issues to Network.

2.7 **Validation and Conformance.** When Participating Entity is sending CQM Data or using the Services to query to find CQM Data, Participating Entity shall send to the Services the query or CQM Data that conforms to the implementation guide.

3. RESPONSIBILITIES OF PARTICIPATING ENTITY

3.1. **Minimum System Requirements.** Participating Entity is responsible for procuring and maintaining, at its own expense, all equipment, software, services and testing necessary to effectively and reliably meet the Minimum System Requirements and participate in the Services.

3.2. **Compliance in Using, Disclosing and Obtaining Information.** The Network and Participating Entity are each separately responsible for ensuring that it complies with Applicable Laws and Standards and the applicable Program Policies and Agreements in sending, receiving, finding, or using Message Content using the Services. If Participating Entity is using the CQMR System, Participating Entity is responsible for obtaining and requiring its Authorized Users to obtain any authorization or consent from any individual whose Message Content it sends, receives, finds or uses through the Services. If Participating Entity is using the CQMR System, the parties shall comply with the HIPAA Addendum. In addition to those requirements in the HIPAA Addendum, in the event Participating Entity or an Authorized User sends or receives Message Content for which Participating Entity is not authorized to send or receive, Participating Entity will immediately inform the Network, delete such Message Content, and require its Authorized Users to do so.

3.3. **Patient Care.** Participating Entity is responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from, or in any way related to, the use of the Services or the Message Content made available thereby. The Network does not assume any role in the care of any patient.

3.4. **System Security.** Participating Entity is responsible for maintaining a secure environment to connect to the Services which permits compliance with the HIPAA Addendum and all Applicable Laws and Standards.

3.5. **Authorized Users.** Participating Entity will ensure that each Authorized User complies with these Terms and any instruction issued by the Network and its licensors with respect to the use of the Services.

3.6. **No Prohibited Use.** Participating Entity may not use the Services if (a) it is prohibited by law from sending, receiving, finding, or using Message Content through the Services, or (b) it is not fully able and competent to enter into a binding contract with the Network regarding the use of the Services.

3.7. **Accuracy of Message Content.** Participating Entity hereby represents that at the time of sending, the Message Content it sends is a faithful representation of the data.

3.8. **Express Warranty of Authority to Send Message Content.** Participating Entity represents and warrants that at the time of disclosure it has sufficient authority to send such Message Content.

3.9. **Express Warranty of Authority to Find Message Content.** Participating Entity represents and warrants that at the time of receipt it has sufficient authority to find such Message Content.

4. ACTIVITY

Participating Entity is responsible for all of the activities of its Authorized Users, and must keep log-in information confidential. Participating Entity may only provide access to Authorized Users. Participating Entity must notify the Network immediately of any unauthorized use of the Services or if it believes that log-in information is no longer confidential. Participating Entity shall not disclose its log-in information to any third party or permit any third party to access its log-in information for the Services.

Network assumes no responsibility or liability for any Message Content that Participating Entity submits to the Services, or for any use or misuse by Participating Entity or third parties of Message Content sent or received.

5. PROTECTED HEALTH INFORMATION

To the extent the Network is acting as a Business Associate of the Participating Entity, the terms and conditions of the HIPAA Addendum apply to the parties' use, access and disclosure of PHI, as applicable.

6. PROHIBITED USE

The Services' design, text and graphics, and the selection and arrangement of such elements are copyrighted and are protected by worldwide copyright laws and treaty provisions. Unless otherwise indicated, all product and service marks and logos displayed on the Services are subject to the trademark rights of the Network, its affiliates, or its business partners. Except for the express licenses granted to Participating Entity and its Authorized Users herein, Participating Entity neither has nor acquires any rights, title or interests in or to the Services, or any element thereof. Participating Entity shall not: (a) remove or destroy any proprietary rights marks or legends on or in the Services; (b) modify, enhance, adapt, translate, or create derivative works of the Services; (c) republish, post, transmit, transfer, distribute, assign, sublicense, rent, lease or sell the Services; (d) decompile, disassemble or reverse engineer the Services; (e) reproduce or make copies of the Services; (f) "frame" or "mirror" the Services on any other server or Internet-based device; and/or (g) access, view, download, print, use and/or display the Services for any commercial or other money-making purpose; (h) share its login information for the benefit of another service provider; (i) use any data mining, robots, or similar data gathering and extraction tools; or (j) use any meta tags or any other "hidden text" utilizing the Network's name or trademarks without the Network's express written consent.

7. TERRITORY

The Network operates the Services from within the United States. The Network makes no representation that content and materials on the Services are legal or appropriate for use from outside the United States. If Participating Entity accesses the Services from outside the United States, it does so at its own risk. Participating Entity may not use the Services in violation of United States export laws and regulations.

8. DISCLAIMER OF WARRANTY

THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND AND THE NETWORK HEREBY DISCLAIMS ALL WARRANTIES EXPRESS AND IMPLIED WITH REGARD TO THE SERVICES AND THESE TERMS INCLUDING ANY IMPLIED WARRANTY OF TITLE, NON-INFRINGEMENT, OF MERCHANTABILITY OR QUALITY, OR OF FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, THE NETWORK DISCLAIMS ANY WARRANTY THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE NETWORK OR ELSEWHERE WILL CREATE ANY WARRANTY. THE NETWORK WILL HAVE NO RESPONSIBILITY FOR OR LIABILITY RELATED TO THE ACCURACY, CONTENT, CURRENCY, COMPLETENESS, OR DELIVERY OF ANY

MESSAGE CONTENT PROVIDED BY A PARTICIPATING ENTITY TO THE SERVICES. THE NETWORK ASSUMES NO LIABILITY AND DOES NOT MAKE ANY WARRANTIES RELATING TO THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY MESSAGE CONTENT WHILE IT IS TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES. FOR PURPOSES OF THIS DISCLAIMER, ALL REFERENCES TO THE NETWORK WILL INCLUDE THE NETWORK'S SERVICE PROVIDERS, SUPPLIERS, AND VENDORS. Some states, territories and countries do not allow certain warranty exclusions, so to that extent the above exclusion may not apply.

The Network reserves the right to monitor some, all, or none of the areas of the Services for adherence to these Terms. Participating Entity acknowledges that the Network is acting as a passive conduit for distribution and not undertaking any obligation or liability relating to any Message Content on the Services.

9. LIMITATION OF LIABILITY

9.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL THE NETWORK BE LIABLE TO PARTICIPATING ENTITY OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE USE, PERFORMANCE OR OPERATION OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE NETWORK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2 TOTAL LIABILITY. EXCEPT FOR PERSONAL INJURY OR DEATH RESULTING FROM THE NETWORK'S BREACH OF THESE TERMS, THE NETWORK'S TOTAL CUMULATIVE LIABILITY TO PARTICIPATING ENTITY OR TO ANY THIRD PARTY FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO, AND WILL NOT EXCEED \$100.

10. TERM & TERMINATION

10.1 Term. These Terms are effective once Participating Entity accesses the Services and will remain in effect for as long as Participating Entity uses the Services.

10.2 Termination and Suspension. If Participating Entity no longer wishes to be bound by these terms Participating Entity must stop using the Services. Participant agrees that the Network may immediately suspend or terminate Participating Entity's or any Authorized User's access for its failure to comply with these Terms. The Network may, to the extent it determines it is reasonable and able to do so, provide advance notice of suspension or termination to Participating Entity or any Authorized User in order to provide an opportunity to cure any deficiency or breach.

The Network may also, in its sole discretion and at any time, with or without notice, discontinue

the Services or any portion of it, restrict the time the Services is available, or restrict the amount of use permitted.

Participating Entity agrees that the Network will not be liable to Participating Entity or any third-party for any termination of its access to the Services.

Provisions that survive termination of these Terms are those relating to ownership, limitations of liability, indemnification and others which by their nature are intended to survive.

11. INDEMNIFICATION

The limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, are applicable to this Section 11 if Participating Entity is an Oregon unit of local government as defined in ORS 174.116(1) (“Oregon Local Government”) or is within the State of Oregon executive department as defined in ORS 174.112 (“Oregon State Agency”). Participating Entity agrees to defend, indemnify and hold harmless (including payment of reasonable attorneys’ fees) the Network from and against any liability, claim, action, loss, damage, or expense (including court costs and reasonable attorneys’ fees) based on any third-party claims arising out of, or relating to: (a) Participating Entity’s unauthorized or inappropriate use of or modifications to the Services; or (b) the Network’s sending, receiving, finding, or using any Message Content sent, received, found, or used by Participating Entity, except to the extent such sending, receiving, finding, or using Message Content by the Network is in violation of these Terms. If Participating Entity is an Oregon State Agency, Participating Entity has no obligation to defend Network.

12. GOVERNING LAW & VENUE

Except as below, these Terms are governed by and interpreted according to the laws of the State of Michigan (without regard to its conflict of law principles), and the parties hereby consent to the exclusive jurisdiction of the state or federal courts in the State of Michigan to adjudicate any dispute arising under or in connection with this Agreement. Any such dispute shall be brought before the state or federal courts located in Ingham County, Michigan. The parties hereby waive any objection based on inconvenient forum.

If Participating Entity is an Oregon Local Government or an Oregon State Agency or if Authorized User’s Participating Entity is an Oregon Local Government or an Oregon State Agency:

- (a) These Terms are governed by and construed according to the laws of the State of Oregon without regard to principles of conflict of laws;
- (b) Any claim, action, suit, or proceeding (collectively, “Claim”) between the Network and such a Participating Entity or Authorized User that arises from or relates to these Terms must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon;
- (c) THE PARTIES HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

In no event may this section be construed as (1) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (2) consent by the State of Oregon to the jurisdiction of any court.

13. THIRD PARTY AGREEMENTS. The Services may make use of third party software, content, and data (the “**Third Party Materials**”). Use of the Third Party Materials included in the Services may be subject to the third party terms and conditions found at www.mihin.org/third-party-terms-and-conditions (collectively “Third Party Terms”), in addition to the terms and conditions included above. Unless expressly provided otherwise in the Third Party Terms, Participating Entity may only use the Third Party Materials in connection with its use of the Services. In the event of a conflict between these Terms and any Third Party Terms, the terms of the Third Party Terms shall control. Participating Entity’s use of the Third Party Materials will indicate its agreement to be bound by the Third Party Terms. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT TO THE CONTRARY, NETWORK MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY THIRD PARTY MATERIALS. NETWORK EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE/NON-INFRINGEMENT, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY MATERIALS. NEITHER NETWORK NOR THE THIRD PARTIES FURNISHING THE THIRD PARTY MATERIALS WILL HAVE ANY LIABILITY TO PARTICIPATING ENTITY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER INCIDENTAL, DIRECT, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THE THIRD PARTY MATERIALS. IN ANY EVENT, THE TOTAL LIABILITY OF NETWORK AND THE THIRD PARTIES FURNISHING THE THIRD PARTY MATERIALS FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00). PARTICIPATING ENTITY SHOULD CONSULT THE THIRD PARTY TERMS, IF ANY, FOR WARRANTY AND PERFORMANCE INFORMATION.

14. SEVERABILITY & WAIVER

If any provision of these Terms is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision is modified to the extent necessary to be valid and enforceable, and all other provisions of these Terms remain in full force and effect.

The failure of the Network to enforce any right or provision in these Terms does not constitute a waiver of such right or provision unless acknowledged and agreed to by the Network in writing. No waiver is implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will affect the other provisions of these Terms.

15. ENTIRE AGREEMENT

These Terms constitute the complete understanding and agreement of the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to its subject matter.

AGREED AND ACCEPTED

Participating Entity: _____

Signature: _____

Name (printed): _____

Title: _____ Date: _____

Exhibit 1

HIPAA Addendum

The parties to this HIPAA Addendum (“Addendum”) are Michigan Health Information Network Shared Services (“Network”) and the participating entity entering into the Terms of Service (“Participating Entity”).

Participating Entity is either a Covered Entity or acting on behalf of a Covered Entity as its Business Associate (as those terms are defined in 45 CFR 160.103) and this Addendum applies to the extent the Network is acting as a Business Associate of Participating Entity.

In consideration for Network’s access to and/or use of PHI for those purposes allowed by HIPAA and consistent with the services that Network performs for Participating Entity, and in consideration for the mutual promises and covenants set forth below, the parties agree as follows:

1. Definitions. As used in this Addendum:

“**Breach Notification Standards**” means the HIPAA regulations governing notification in the case of breach of unsecured PHI as set forth at 45 CFR § Part 164, Subpart D, and all applicable stricter state and federal laws, as they exist now or as they may be amended.

“**Designated Record Set**” means a group of records maintained by or for Participating Entity that is (i) the medical records and billing records about individuals maintained by or for Participating Entity, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Participating Entity to make decisions about individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Participating Entity.

“**HIPAA**” means the Health Insurance Portability and Accountability Act, Public Law 104-91, and any amendments thereto.

“**HIPAA Transaction**” means Transactions as defined in 45 CFR § 160.103 of the Transaction Standards.

“**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.

“**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).

“**Minimum Necessary**” shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b).

“**Privacy Rule**” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR § Part 160 and Part 164, as they exist now or as they may be amended.

“**Protected Health Information**” or “**PHI**” shall have the meaning set forth at 45 CFR § 160.103 of HIPAA.

“**Required By Law**” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.

“**Secretary**” means the Secretary of the Department of Health and Human Services or his designee.

“**Security Incident**” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

“**Security Standards**” means the Security Standards, 45 CFR § parts 160, 162 and 164, as they exist now or as they may be amended.

“**Transaction Standards**” means the Standards for Electronic Transactions, 45 CFR § part 160 and part 162, as they exist now or as they may be amended.

1.1. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those used in the Privacy Rule or the HITECH Act, and any amendments or implementing regulations.

2. Obligations and Activities of Network.

2.1. Network agrees that it shall not, and that its directors, officers, employees, contractors and agents shall not, use or further disclose PHI other than as permitted or required by this Addendum or as Required By Law.

2.2. Network agrees to use appropriate safeguards in accordance with the Privacy Rule to prevent use or disclosure of the PHI other than as provided for by this Addendum.

2.3. Network agrees to mitigate, to the extent required by law, any harmful effect that is known to Network of a use or disclosure of PHI by Network in violation of the requirements of this Addendum, including, but not limited to, compliance with any state law or contractual data breach requirements.

2.4. Network agrees to report to Participating Entity any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware, or of any act or omission that violates the terms of this Addendum in accordance with the “**Breach Notification**” Section, below.

2.5. Network agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Network on behalf of Participating Entity, agrees in writing to the same restrictions and conditions that apply through this Addendum to Network with respect to such information. Further, Network shall include in its contracts with agents or subcontractors the right to terminate the contract if the agent or subcontractor commits a material

breach under the contract, and Network shall exercise such termination rights in the event of a material breach. These obligations do not pertain to subcontractors that act as mere conduits for the transport of PHI but do not access the information other than on a random or infrequent basis.

2.6. Network agrees to provide access, at the request of Participating Entity, and in the time and manner designated by Participating Entity, to PHI in a Designated Record Set, to Participating Entity or, as directed by Participating Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524 and HITECH Act § 13405(e).

2.7. Network agrees to make any amendment(s) to PHI in a Designated Record Set that Participating Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Participating Entity or an Individual, and in the time and manner designated by Participating Entity. If Network provides Designated Record Sets to third parties, Network shall ensure such records are also amended.

2.8. Network agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Network on behalf of Participating Entity, available to the Secretary, in a time and manner designated by Participating Entity or the Secretary, for purposes of the Secretary determining Participating Entity's compliance with the Privacy Rule.

2.9. Network agrees to document disclosures of PHI, and information related to such disclosures, as would be required for Participating Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act § 13405(c). Network agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

2.10. Network agrees to provide to Participating Entity or to an Individual, in the time and manner designated by Participating Entity, information collected in accordance with Section 2.9 of this Addendum, to permit Participating Entity to respond to a request by an Individual for an accounting of disclosures of PHI during the six (6) years prior to the date on which the accounting was requested, in accordance with 45 CFR § 164.528.

2.11. In the event Network receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Network will respond as permitted by 45 CFR § 164.512(e) and (f).

2.12. Network will not make any communications to individuals in violation of the restrictions on marketing in HITECH Act § 13406(a) and without the prior consent of Participating Entity.

2.13. If Network will communicate with any individuals who are the subject of PHI originating from or prepared for Participating Entity, Network agrees to implement procedures to give timely effect to an individual's request to receive communications of PHI by alternative means or at alternative locations, pursuant to 45 CFR § 164.522(b), so as to ensure that PHI will only be

communicated to those individuals designated in such a request as authorized to receive the PHI. If Network provides records to agents, including subcontractors, who may also communicate with the individual, Network shall ensure that the individual's request for communications by alternative means is provided to and given timely effect by such agents.

2.14. Network shall not directly or indirectly receive or provide remuneration in exchange for any PHI in violation of any final regulations promulgated by the Secretary under HITECH Act § 13405(d) once such regulations become effective.

2.15. Electronic Transactions. Network hereby agrees that, to the extent that it is electronically sending any of the HIPAA Transactions for Participating Entity, the format and structure of such transmissions shall be in compliance with the Transaction Standards.

2.16. Electronic Data Security. To the extent that Network sends, receives, finds, or uses electronic PHI, Network hereby agrees that it:

2.16.1. Has implemented and documented administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that Network sends, receives, finds, or uses on behalf of Participating Entity consistent with the requirements at 45 CFR §§ 164.308, 164.310, 164.312 and 164.316;

2.16.2. Will ensure that any agent, including a subcontractor, to whom Network provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect the PHI; and

2.16.3. Will keep records of all Security Incidents involving PHI of which Network becomes aware, and will report to Participating Entity all significant Security Incidents of which Network becomes aware.

2.17. Breach Notification. The parties have in place policies and procedures that are designed to detect inappropriate acquisition, access, use or disclosure of unsecured PHI, as that term is defined in HITECH, and each party trains its work force and agents on these procedures. Each party agrees that it will notify the other party within ten (10) business days of discovering an inappropriate acquisition, access, use or disclosure of PHI sent, received, found, or used by, to, through, or on behalf of the other party, and, as soon as reasonably practicable, but in no event later than thirty (30) calendar days of discovery will provide the other party with the identification of each individual whose PHI has been or is reasonably believed to have been breached during such incident, and any other information required pursuant to 45 C.F.R. §§ 164.400-414. Each party will assist the other party in assessing whether the Breach compromises the security or privacy of the PHI of the individuals whose information is involved. In the event that individuals whose data is affected by the impermissible acquisition, access, use or disclosure must be notified pursuant to the HIPAA Breach Notification Standards or other applicable law, the party responsible for the Breach will provide such notification at its own expense without unreasonable delay and in compliance with applicable law or reimburse the reasonable costs of the party that bears the responsibility to provide notification.

2.18. If Participating Entity delegates the performance of a particular Privacy Rule obligation to Network, Network will comply with the requirements of the Privacy Rule that would apply to Participating Entity in the performance of such obligation.

3. Permitted Uses and Disclosures by Network

3.1. General Use. Except as otherwise limited in this Addendum, Network may use or disclose PHI on behalf of or to provide services to Participating Entity for the following purposes, if such use or disclosure of PHI would not violate the Privacy Rule if done by Participating Entity or the minimum necessary policies and procedures of Participating Entity: transmission of electronic health information and management of the Network Services.

3.2. Specific Use and Disclosure Provisions. Except as otherwise limited in this Addendum, Network may disclose PHI to carry out the legal responsibilities of Network and for its own proper management and administration, provided that disclosures are required by law, or Network obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be 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 Network of any instances of which it is aware in which the confidentiality of the information has been breached. All other disclosures shall be subject to Participating Entity's prior written permission.

4. Obligations of Participating Entity.

4.1. Participating Entity shall notify Network of any limitation(s) in the notice of privacy practices of Participating Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Network's use or disclosure of PHI. Network will give timely effect to such limitations.

4.2. Participating Entity shall notify Network of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Network's use or disclosure of PHI. Network will give timely effect to such changes or revocations.

4.3. Participating Entity shall notify Network of any restriction to the use or disclosure of PHI that Participating Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Network's use or disclosure of PHI. Network will give timely effect to such restrictions.

4.4. Participating Entity shall not request Network to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Participating Entity, except as specifically allowed by the "**Specific Use and Disclosure Provisions**" Section of this Addendum.

5. Term and Termination.

5.1. Term. The term of this Addendum shall be effective so long as the Terms of Service (the "Terms") are in effect between the parties and shall terminate when all of the PHI in any form, recorded on any medium, or stored in any storage system provided by Participating Entity to Network, or created or received by Network on behalf of Participating Entity, is destroyed or returned to Participating Entity, or, if it is infeasible to return or destroy PHI, protections are

extended to such information, in accordance with the termination provisions in this Section. This provision shall apply to PHI that is in the possession of Network or agents of Network. Network shall retain no copies of the PHI, except as provided in paragraph 5.4.2.

5.2. Termination for Breach by Network. Upon Participating Entity's knowledge of a material breach of the terms of this Addendum by Network, Participating Entity shall either:

5.2.1. Provide an opportunity for Network to cure the breach or end the violation and terminate their relationship and the Terms if Network does not cure the breach or end the violation within the time specified by Participating Entity;

5.2.2. Immediately terminate its relationship with Network and the Terms if Network has breached a material term of this Addendum and cure is not possible; or

5.2.3. If neither termination nor cure are feasible, report the violation to the Secretary.

Participating Entity's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights Participating Entity has in the Terms, this Addendum or by operation of law or in equity.

5.3. Termination for Breach by Participating Entity. Upon Network's knowledge of a material breach of the terms of this Addendum by Participating Entity, Network shall either:

5.3.1. Provide an opportunity for Participating Entity to cure the breach or end the violation and terminate their relationship and the Terms if Participating Entity does not cure the breach or end the violation within the time specified by Network; or

5.3.2. Immediately terminate its relationship with Participating Entity and the Terms if Participating Entity has breached a material term of this Addendum and cure is not possible.

5.4. Effect of Termination.

5.4.1. Except as provided in paragraph 5.4.2 of this Section, upon termination of the Terms, for any reason, Network shall return or, at Participating Entity's direction, destroy all PHI received from Participating Entity, or created or received by Network on behalf of Participating Entity in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of subcontractors or agents of Network. Network shall retain no copies of the PHI, except as provided in paragraph 5.4.2.

5.4.2. In the event that return or destruction of the PHI is infeasible, Network shall extend the protections of this Addendum 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 Network maintains such PHI.

6. Indemnification.

Each party shall indemnify and hold harmless the other party and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by the indemnified party arising from a violation by the indemnifying party of its obligations under this Addendum. The indemnified party shall: (i) give the indemnifying party prompt written notice of such claim; and (ii) allow the indemnifying party to control, and fully cooperate with the indemnifying party (at the indemnifying party's sole expense) in, the defense and all related negotiations. The indemnifying party shall not enter into any stipulated judgment or settlement that purports to bind the indemnified party without the indemnified party's express written authorization, which shall not be unreasonably withheld or delayed.

If Participating Entity is an Oregon State Agency or an Oregon Local Government, Participating Entity's obligation under this Addendum to indemnify or hold Network harmless against claims brought by third parties against Network, including any payment of attorneys' fees, are subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300. If Participating Entity is an Oregon State Agency, Participating Entity has no obligation to defend Network.

If Participating Entity is an Oregon State Agency To the extent Network is required under this Addendum to defend Participating Entity against claims asserted by third parties, Participating Entity shall reasonably cooperate in good faith, at Network's reasonable expense, in the defense of the claim, Network shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim, and Licensor shall bear all costs of counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, Participating Entity, its officers, employees or agents. Participating Entity may elect to assume its own defense with an attorney of its own choice and at its own expense any time Participating Entity determines important governmental interests are at stake. Participating Entity will promptly provide notice to Network of any claim that may result in an obligation on the part of Network to defend. Subject to these limitations, Network may defend a claim with counsel of its own choosing, on the condition that no settlement or compromise of any claim may occur without the consent of Participating Entity, which consent must not be unreasonably withheld.

7. Miscellaneous.

7.1. Amendment. No provision of this Addendum may be modified except by a written document signed by a duly authorized representative of the parties. The parties agree to amend this Addendum, as appropriate, to conform with any new or revised legislation, rules and regulations to which Participating Entity is subject now or in the future including, without limitation, the Privacy Rule, Security Standards or Transactions Standards (collectively "Laws").

If within ninety (90) days of either party first providing written notice to the other of the need to amend this Addendum to comply with Laws, the parties, acting in good faith, are i) unable to mutually agree upon and make amendments or alterations to this Addendum to meet the requirements in question, or ii) alternatively, the parties determine in good faith that amendments or alterations to the requirements are not feasible, then either party may terminate this Addendum upon thirty (30) days' written notice.

7.2. Assignment. No party may assign or transfer any or all of its rights and/or obligations under this Addendum or any part of it, nor any benefit or interest in or under it, to any third party without the prior written consent of the other party, which shall not be unreasonably withheld, provided however, that this provision shall not apply where the assignment or transfer is effected by the sale or transfer of assets or of a controlling ownership interest in Network or Participating Entity.

7.3. Survival. The respective rights and obligations of Network under the “**Effect of Termination**” Section of this Addendum shall survive the termination of this Addendum.

7.4. Interpretation. Any ambiguity in this Addendum shall be resolved to permit Participating Entity to comply with the Breach Notification Standards, Privacy Rule, Security Standards, and Transaction Standards. If there is any inconsistency between this Addendum and any other agreement between the parties, the language in this Addendum shall control.

7.5. Third Party Rights. The terms of this Addendum are not intended, nor should they be construed, to grant any rights to any parties.

7.6. Minimum Necessary. Network agrees that, for all PHI that Network accesses or requests from Participating Entity for the purposes of providing services, it shall access or request, and Participating Entity shall provide, only that amount of information that is minimally necessary to perform such services. In addition, for all uses and disclosures of PHI by Network, Network shall institute and implement policies and practices to limit such uses and disclosures to that which is minimally necessary to perform its services. Network shall determine the amount minimally necessary consistent with the requirements in the HITECH Act, § 13405(b), or as otherwise specified in regulations promulgated by the Secretary of the Department of Health and Human Services.

7.7. HITECH Act, § 13404. Network may use and disclose PHI only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR §164.504(e) and this Addendum.

7.8. Notice. All notices required under this Addendum shall be provided in accordance with the Terms.

7.9 Owner of PHI. Under no circumstances shall Network be deemed in any respect to be the owner of any PHI used or disclosed by or to Network by Participating Entity.