

Florida Health Information Exchange General Participation Terms and Conditions

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Florida Health Information Exchange General Participation Terms and Conditions

The following Florida Health Information Exchange General Participation Terms and Conditions (hereinafter "General Terms and Conditions") apply to the use of services offered as part of the Florida Health Information Exchange program and are incorporated by reference into the Subscription Agreements related thereto. Each Subscription Agreement is a multi-party agreement and establishes the provisions and obligations to which all signatories ("parties") agree. These General Terms and Conditions, together with the Subscription Agreements, set forth the provisions governing accessing Health Data through the Network.

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meaning ascribed to them below. All defined terms are capitalized throughout this Agreement.
 - a. **Agreement** shall mean a Subscription Agreement together with these General Terms and Conditions, which are incorporated into each Subscription Agreement by reference.
 - b. **AHCA** shall mean the Agency for Health Care Administration, a State of Florida agency.
 - c. **Applicable Law** shall mean all applicable statutes, rules and regulations of Florida, as well as all applicable federal statutes, rules, and regulations.
 - d. **Breach** shall mean an impermissible use or disclosure under the Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) that compromises the security or privacy of the protected health information. Breach excludes:
 - (i) Any unintentional acquisition, access, or use of protected health information by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
 - (ii) Any inadvertent disclosure by a person who is authorized to access protected health information at a covered entity or business associate to another person authorized to access protected health information at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
 - (iii) A disclosure of protected health information where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Except as provided in (i) through (iii) above of this definition, an acquisition, access, use, or disclosure of protected health information in a manner not permitted under the Privacy Rule is presumed to be a breach unless the covered entity or business associate, as applicable,

demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:

- (i) The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
- (ii) The unauthorized person who used the protected health information or to whom the disclosure was made;
- (iii) Whether the protected health information was actually acquired or viewed; and
- (iv) The extent to which the risk to the protected health information has been mitigated.

- e. **Business Associate** shall mean the Vendor when it, pursuant to this Agreement:
 - i. on behalf of a Covered Entity Participant, but other than in the capacity of a member of the workforce of such Covered Entity, performs, or assists in the performance of:
 - 1. a function or activity involving the use or disclosure of PHI, or
 - 2. any other function or activity regulated by the HIPAA Privacy Rule, or
 - ii. provides, other than in the capacity of a member of the workforce of a Covered Entity Participant, consulting, data aggregation (as defined in 45 CFR § 164.501), management, administrative, or other services to or for a Covered Entity Participant, where the provision of the service involves the disclosure of PHI from such Covered Entity Participant, or from another business associate of the Covered Entity Participant to the Business Associate.
- f. **Common Network Resource** shall mean software, utilities and automated tools made available for use in connection with the Network and which have been designated as a "Common Network Resource" by Vendor.
- g. **Covered Entity** shall mean a Participant that is a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR Parts 160, 162, or 164; or a health plan as that term is defined at 45 CFR Part 160.103.
- h. **Designated Record Set** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.
- i. **Discloser** shall mean Vendor or a Participant that discloses Proprietary Information to a Receiving Party.
- j. **Dispute** shall mean any controversy, dispute, or disagreement arising out of or relating to this Agreement.

- k. **Health Care Operations** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.
- l. **Health Data** shall mean that information which is requested, disclosed, stored on, made available on, or sent by a Participant, or requested or sent by Vendor (only for operational purposes) through the Network. This includes, but is not limited to, Protected Health Information (PHI), individually identifiable health information, de-identified data, or limited data sets (as defined in the HIPAA Regulations), pseudonymized data, metadata, and schema.
- m. **HHS Secretary** shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- n. **HIPAA Regulations** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160, 162 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) of the American Recovery and Reinvestment Act of 2009, as in effect on the date of this Agreement and as may be amended, modified, or renumbered.
- o. **HITECH** shall mean the Health Information Technology for Economic and Clinical Health Act of 2009 (which is part of the American Recovery and Reinvestment Act of 2009 (ARRA)), and any of its implementing regulations.
- p. **Individual** shall mean a person who is the subject of PHI, and shall have the same meaning as the term "individual" as defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- q. **Individually Identifiable Health Information** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.
- r. **Material** shall mean, for the purposes of Section 4 (Network Operating Policies and Technical Requirements) only, the implementation of, or change to, a Network Operating Policy or Technical Requirement that will: (i) have a significant adverse operational or financial impact on at least 20% of Participants; (ii) require at least 20% of Participants to materially modify their existing agreements with or policies or procedures that govern Participant Users or Participant's subcontractors.
- s. **Minimum Necessary** shall refer to the standard set forth at 45 CFR § 164.502(b) and 164.514(d) of the HIPAA Regulations.
- t. **Network** shall mean the network operated by Vendor that allows for the exchange of Health Data and/or information between and among Participants and Participant Users, as specifically described in this Agreement for:

- i. Direct exchange, as applicable or
 - ii. Search, retrieval and/or delivery as applicable.
- u. **Network Operating Policies and Technical Requirements** shall mean the policies and procedures that Participant must have in place and the technical requirements that must be met by a Participant for participating in the Network and sending and/or receiving Health Data (as applicable) for the particular service(s) to which Participant is subscribed, which Network Operating Policies and Technical Requirements are set forth for each subscribed service and as are amended from time to time in accordance with Section 4 (Network Operating Policies and Technical Requirements).
- v. **Notice** or **Notify** shall mean a written communication, unless otherwise specified in this Agreement, sent to the appropriate party's representative at the address listed in the Subscription Agreement in compliance with Section 20 of this Agreement.
- w. **Participant** shall mean any organization that (i) meets the requirements for participation in the Network as contained in the applicable Network Operating Policies and Technical Requirements, (ii) is accepted by Vendor and the Agency for Health Care Administration (AHCA) for participation, and (iii) is a signatory to this Agreement.
- x. **Participant Users** shall mean those persons who have been authorized by Participant to access Health Data through the Network and in a manner defined by the respective Participant, in compliance with the terms and conditions of this Agreement and Applicable Law. "Participant Users" may include, but are not limited to, health care providers and employees, contractors, or agents of a Participant.
- y. **Payment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.
- z. **Permitted Purposes** shall mean the reasons for which Participant Users may legitimately exchange or use Health Data through the Network as defined in Section 3.
- aa. **Proprietary Information**, for the purposes of this Agreement, shall mean proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such or that is commonly understood to be proprietary information. Proprietary Information includes, but is not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, processes and security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Discloser; and (iii) information or reports provided by a Discloser to a Receiving Party pursuant to this Agreement. Notwithstanding any label to the contrary, Proprietary Information does not include Health Data; any information which is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it; is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party's written records; or, is independently developed by Receiving Party without reference to, reliance on, or use of, Discloser's Proprietary Information.

- bb. **Protected Health Information** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations, and may also be referred to as PHI.
- cc. **Psychotherapy Notes** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.
- dd. **Qualified Service Organization** shall have the same meaning as 42 CFR § 2.11, and may also be referred to as a QSO.
- ee. **Receiving Party** shall mean a Participant or AHCA that receives Proprietary Information from a Discloser.
- ff. **Recipient** shall mean the person(s) or organization(s) that receives Health Data through the Network for a Permitted Purpose. "Recipients" may include, but are not limited to, Participants, Participant Users, and Vendor.
- gg. **Required By Law** shall have the meaning set forth at 45 CFR § 164.103 of the HIPAA Regulations.
- hh. **System** shall mean software, portal, platform, or other electronic medium controlled by a Participant through which the Participant sends, receives, discloses or uses Health Data through or from the Network. For the purposes of this definition, it shall not matter whether the Participant controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.
- ii. **Treatment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

2. **Administration of the Network.**

- a. **Vendor Role.** AHCA has engaged Vendor to administer the Network. The parties acknowledge that Vendor has no control over the content of the Health Data available through the Network, or the activities of the Participants and Participant Users. The accuracy of any Health Data, as well as the authority of any Participant Users to access or disclose Health Data are the responsibility of the Participants and not Vendor. Participant acknowledges that Vendor's obligations are limited to implementing and maintaining the technical infrastructure of the Network in addition to other activities specified in this Agreement, as well as the following administrative activities:
 - i. **New Participants.** Vendor will review, evaluate and act upon requests submitted by organizations that want to become a Participant to a particular service on the Network, and determine whether such organizations meet the technical and operational requirements established by AHCA and Vendor to become new Participants, and execute one or more Subscription Agreements with any such new Participants, when appropriate. No further action or approval is required by other Participants for the addition of new Participants pursuant to this section. All Participants will be notified by Vendor of new Participants being added prior to the new Participant accessing or using the Network.

- ii. **Vendor Responsibilities and Subcontractors.** Vendor may delegate responsibilities related to the Network administration to one or more subcontractors. Vendor shall ensure that any subcontractor executes an agreement that only specifically authorized representatives of its subcontractor shall be granted access to the Network in connection with subcontractor's responsibilities, that the subcontractor will comply with the Business Associate provisions of this Agreement (detailed in Section 12) and the Qualified Service Organization provisions of this Agreement (detailed in Section 13), and will comply with the confidentiality provisions of this Agreement and Applicable Law. The Participants acknowledge and agree that access to Health Data, Proprietary Information (if necessary), and other relevant data (including aggregate data) shall be granted to Vendor for all of its functions and obligations under this Agreement and shall be granted to Vendor's subcontractors for the sole purpose of assisting Vendor in maintaining the technical operations of the Network. Vendor shall give notice to the Participants of who it is using as subcontractors for any work on the Network. Vendor and any of its subcontractors shall employ security mechanisms that are consistent with the Security Standards of the HIPAA Regulations to provide for the security of the information. Further, Vendor will not store, transmit or access any Health Data outside of the United States of America, and Vendor will not permit any subcontractors to, store, transmit, or access any Health Data outside of the United States of America.
- b. **Business Associate of Covered Entity Participants.** Vendor is a Business Associate of each Participant who is considered a "covered entity" under HIPAA Regulations. The provisions governing this Business Associate relationship are included in Section 12 of this Agreement.
- c. **Qualified Service Organization of Participants with 42 CFR Part 2 Program(s).** Vendor is a Qualified Service Organization of Participants who have programs covered by 42 C.F.R. Part 2 (certain federally-funded substance abuse treatment programs). The provisions governing this Qualified Service Organization relationship are included in Section 13 of this Agreement.
- d. **Additional Sources of Health Data.** AHCA or Vendor may enter into agreements with other entities who can serve as a source of PHI or other data for the Network (e.g., private lab test results, prescription history from a pharmacy benefit manager, immunization registry data) that would be beneficial to the Network and/or to Participants and make that available through the Network for certain services. If applicable to this Agreement, such agreements shall not be inconsistent with the provisions of this Agreement, and Participant shall treat such Health Data from such additional sources in the same manner as other Health Data on the Network. Ten-day advance notice of any new sources of Health Data shall be given by AHCA and/or Vendor to the Participants that would have access to such additional data sources.
- e. **Provision of Network Equipment and Software.** Vendor will provide the computer software necessary to allow Participants to access Health Data on the Network; however, Participants must also have the software and other infrastructure that meets the applicable Network Operating Policies and Technical Requirements for the particular service(s) Participant is subscribed to in order to interface with Vendor's system. Participants shall arrange for their

own carrier lines, computer terminals or personal computers, printers, or other equipment for accessing the Network, and shall ensure that they are properly configured to access the Network including but not limited to the base workstation operating system, web browser and Internet connectivity. Any equipment, software, or intellectual property provided by Vendor to Participants shall remain the property of Vendor, unless otherwise specified in Vendor's agreement with AHCA. From time to time, grants and contracts in which the Participants, Vendor and/or AHCA agree to participate that relate to the use and disclosure of Health Data may provide for the purchase of additional equipment related to the Network. The ownership of any such equipment shall be governed by the relevant grant or contract. Any equipment or communication lines supplied by individual Participants shall remain the sole property of the supplying Participant.

- f. **Accounting of Disclosures.** Upon Participant's written request, Vendor shall provide an accounting of disclosures of PHI made by Participant via the Network within ten (10) business days of such request, in order for Participant (or Participant's Users) to comply with HIPAA, HITECH and all Applicable Law. The Vendor shall not, and shall not be required to, accept and respond to direct inquiries from a Participant's, or a Participant User's, patient or their legal representative. The Vendor shall refer all inquiries from individuals to their known Participants for response.

3. Use of Health Data.

- a. **Subscription Agreement.** Participants enter into a Subscription Agreement with Vendor for each health information exchange service that it desires to participate in and allow its Health Data to be utilized for, and Participant's Health Data will only be used for those Permitted Purposes listed below and those specified in the Subscription Agreement(s) for the particular service(s) to which Participant has subscribed by executing the Subscription Agreement(s). As health information exchange services are introduced by AHCA and/or Vendor, all Participants will be informed of the new service and what Health Data would be utilized and for what Permitted Purpose and/or provided a separate Subscription Agreement if not already covered or addressed by an existing Subscription Agreement.
- b. **Permitted Purposes.** The Network shall be used only for Permitted Purposes listed below. Each Participant shall require and ensure that its Participant Users only use the Network for the Permitted Purposes. Participants shall ensure that they have obtained any authorization and consents from Individuals that may be required under Applicable Law prior to requesting or accessing Health Data via the Network for particular Individuals.
 - i. Execution of Vendor's Duties under this Agreement. The Vendor shall have access to the Health Data, but only for the express purpose of connecting the Participants and facilitating the delivery of the Health Data on behalf of such Participants and otherwise fulfilling its obligations under the Agreement. Vendor shall have no rights to access or use any Health Data beyond that limited purpose. Vendor shall not store any Health Data, except to the extent necessary for temporary cache or similar purposes as approved by AHCA and the Participants, and except in circumstances where the Vendor will be hosting certain data at the request of AHCA and any applicable Participant whose data is involved. Vendor does not claim any ownership

in any of the content, including any text, data, information, images, sound, video or other material, that Participant may send, store or receive via the Network.

- ii. **Network Reports.** If AHCA or the Florida Department of Health is required to arrange for certain reports and evaluations of the Network under a federal grant or contract, all Participants agree to permit Vendor to generate such reports and provide such information as may be necessary for such required evaluation which will be detailed in a written notice to Participants. Such reports shall not include individually identifiable health information. To the extent reports need to be prepared by Participants for compilation by the Vendor including the removal of identifiers by the Participants, Participants agree to prepare such reports if feasible based on the costs and availability of funding as determined solely by the Participant. To the extent that Participant determines the preparation of all or a portion of such reports is not feasible, Participant shall have no obligation in connection with such reports.
 - iii. **Other Specified Purposes Listed in a Subscription Agreement.** Each Subscription Agreement contains one or more specific permitted purposes for which the Participant who executes such Subscription Agreement is using the Network. Those specified permitted purposes in each Subscription Agreement only apply to those Participants who have subscribed to that same service.
- c. **Permitted Future Uses (Re-Disclosure).** Subject to Section 15.g. (Disposition of Health Data on Termination), Recipients may retain, use and re-disclose Health Data received in response to a request in accordance with Applicable Law and the Recipient's policies and procedures.
- d. **Management Uses.** The Vendor may request information from Participant related to potential breach or other security or technical issue, and Participant shall not unreasonably refuse to provide information to Vendor for such purposes. Notwithstanding the preceding sentence, in no case shall a Participant or Vendor be required to disclose PHI to the Vendor in violation of Applicable Law. Any information, other than Health Data, provided by a Participant to the Vendor shall be treated as Proprietary Information in accordance with Section 11 (Proprietary Information) of this Agreement unless agreed otherwise. Vendor shall have access to all Health Data and Proprietary Information necessary in order to fulfill its duties under this Agreement.
- e. **Prohibited Purposes.** Neither AHCA, nor Vendor, nor any Participant, may access or use the Health Data or any Proprietary Information of another party to compare patient volumes, practice patterns, or make any other comparison without all Participants' written approval. AHCA shall not have access to any Participant's Health Data on the Network, unless expressly approved in writing by a Participant and with any required patient authorizations or consents. Other uses of the Health Data (including but not limited to the Vendor reselling de-identified data) are expressly prohibited under this Agreement without prior written approval from AHCA and any Participant whose data would be involved.

- f. **Cooperation by Participants in Network Evaluations.** The Participants agree to cooperate in studies conducted from time to time by AHCA or its agent related to various issues surrounding the Network, including, but not limited to, a project evaluation required by a federal grant or contract with AHCA or the Florida Department of Health, and the efficacy and usefulness of the Network. Such cooperation by the Participants may include, but not be limited to, participation in interviews, the completion of surveys, and the submission of other written or oral evaluations.

4. **Network Operating Policies and Technical Requirements**

- a. **General Compliance.** Each Participant shall comply with the Network Operating Policies and Technical Requirements that are applicable to the health information exchange services that Participant has subscribed to through its Subscription Agreement(s).
- b. **Adoption of Network Operating Policies and Technical Requirements.** The Participants hereby grant the Vendor the power to adopt new Network Operating Policies and Technical Requirements, and to adopt amendments to, or repeal and replacement of, the same at any time through the Change Process described in the next subsection. Unless otherwise Required By Law, required by a federal grant or contract with AHCA or the Florida Department of Health, or necessary to maintain the stability of the Network, these Network Operating Policies and Technical Requirements shall not alter the relative rights and obligations of the parties under the Agreement and shall not be inconsistent with the Agreement.
- c. **Change Process.**
 - i. **Determination of Materiality.** Vendor shall provide reasonable advance notification to all Participants subscribed to a particular service of any proposed new, or change to existing, Network Operating Policies and Technical Requirements that apply to that particular service. Vendor shall consider feedback from all Participants including any comments on fiscal impact and then determine, in its sole discretion, whether such proposal is Material. If the Vendor determines that the proposal is not Material, then Vendor shall follow the change process in the Section 4(c)(ii). If the Vendor determines that the proposal is Material, then Vendor shall follow the change process in Section 4(c)(iii).
 - ii. **Non-Material Changes.** Vendor may implement any new Network Operating Policies and Technical Requirements, or amend, or repeal and replace any existing Network Operating Policies and Technical Requirements, for a particular service at any time by providing all Participants and AHCA notice of the change at least thirty days prior to the effective date of the change so long as the new or amended Network Operating Policies and Technical Requirements to the particular service are not Material. Within fifteen days of receiving notice of the non-Material change, a Participant or AHCA may request that Vendor delay implementation of the change based on unforeseen complications or other good cause. Vendor shall respond to a request to delay implementation within seven days of receiving the request.

- iii. **Material Changes.** A material change to Network Operating Policies and Technical Requirements shall be made by an amendment to the Agreement as provided in Section 21.d. (Amendments).
- iv. **Change Required to Comply with Federal or Florida State Law, Federal Contract Requirements, or for the Stability of the Network.** If a new or changed Network Operating Policy and Technical Requirement for a service is required for Vendor, AHCA, or the Participants to comply with federal statutes or regulations, or Florida statutes or regulations, or requirements of a federal contract with AHCA or the Florida Department of Health, or to maintain the stability of the Network (e.g., the performance and integrity of data exchanged among Participants), Vendor shall seek input from all Participants and AHCA prior to implementing such change, but is not required to follow the processes required by Sections 4(c)(ii) and (iii) above. Vendor shall not require Participants to comply with such new or changed Network Operating Policies and Technical Requirements prior to the legally required effective date of such federal or Florida state statute or regulation, or federal contract deadline, as applicable. Vendor shall notify Participants and AHCA immediately in the event of a change that is required in order to comply with federal or Florida state statute or regulation, or federal contract requirements, or to maintain the stability of the Network.
- v. **Participant Duty to Terminate Participation or Subscription, as Applicable.** If, as a result of a change made by Vendor in accordance with this Section 4(c), a Participant will not be able to comply with the Network Operating Policies and Technical Requirements for that service or does not otherwise desire to continue subscribing to the particular service, then such Participant shall terminate its subscription to that service in accordance with the relevant Subscription Agreement's terms.

5. **Requirements for Participants.**

- a. **Compliance.** All use of and interactions with the Network by Participant (and Participant's Users) shall comply with all applicable Network Operating Policies and Technical Requirements, these General Terms and Conditions, any Subscription Agreement(s) between Vendor and Participant, any agreements between Participant and its Participant Users, and Applicable Law. Nothing in this Section shall require a disclosure that is contrary to a restriction (granted by the Participant) placed on PHI by a patient pursuant to Applicable Law. Participant shall be solely responsible for maintaining patient medical records, as applicable, in accordance with Applicable Laws, and shall not rely upon Health Data transmitted to, and temporarily stored on, the Network for meeting Participant's obligations under any such laws.
- b. **Participant's Users and System Access Policies.** Each Participant shall have written policies and procedures in place that govern its Participant Users' ability to access information on or through the Participant's System and through the Network ("Participant Access Policies"). Each Participant acknowledges that Participant Access Policies will differ among them as a result of differing Applicable Law and business practices. At a minimum, each Participant shall ensure that it has a valid and enforceable written agreement with each of its

- Participant Users, and/or policies and procedures that Participant Users are required to comply with, that ensure that any Health Data accessed by its Participant Users is: (i) for a Permitted Purpose; (ii) supported by appropriate legal authority for obtaining the Health Data; (iii) requested and viewed by a Participant User with the legal authority to have such access, and (iv) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Participant. Further, each Participant shall employ a process for identity proofing that meets or exceeds National Institutes of Standards and Technology (NIST) Level 3 requirements in effect as of the date of execution of this Agreement by which the Participant, or its designee, validates sufficient information to uniquely identify each person seeking to become a Participant User prior to issuing credentials that would grant the person access to the Participant's System. Participant is solely responsible for authenticating Participant's own Participant Users for that access. Each Participant represents that it shall have the ability to monitor and audit all access to and use of its System related to this Agreement, for system administration, security, and other legitimate purposes. Each Participant agrees to enforce the provisions of this Agreement including but not limited to any provisions regarding limitations on Permitted Purposes for access to the Health Data and any confidentiality provisions of this Agreement by appropriately training all Participant Users, and disciplining individuals within each Participant's organization who violate such provisions pursuant to each Participant's respective Participant Access Policies. Participant shall also require that its Participant Users keep on file any signed patient authorization or consent forms that may be required for documentation regarding access to Health Data from the Network, as well as any documentation of emergency accesses of Health Data from the Network (pursuant to any applicable Network Operating Policies and Technical Requirements).
- c. **Other Impermissible Purposes.** Participant shall not use the Network or permit any Participant User to use the Network to conduct any business or activity, or solicit the performance of any activity, which is prohibited by or would violate any Applicable Law or legal obligation, or for purposes that may create civil or criminal liability, including but not limited to: (i) uses which are defamatory, deceptive, obscene, or otherwise inappropriate; (ii) uses that violate or infringe upon the rights of any other person, such as unauthorized distribution of copyrighted material; (iii) "spamming," sending unsolicited bulk e-mail or other messages on the Network or sending unsolicited advertising or similar conduct; (iv) threats to or harassment of another; (v) knowingly sending any virus, worm, or other harmful component; and (vi) impersonating another person or other misrepresentation of source.
- d. **Cooperation.** To the extent not legally prohibited, each Participant shall: (i) cooperate fully with Vendor and each other Participant with respect to such activities as they relate to this Agreement; (ii) provide such information to Vendor and/or each other Participant as they may reasonably request for purposes of performing activities related to this Agreement, (iii) devote such time as may reasonably be requested by Vendor to review information, meet with, respond to, and advise Vendor or other Participants with respect to activities as they relate to this Agreement; (iv) provide such reasonable assistance as may be requested by Vendor when performing activities as they relate to this Agreement; and (v) subject to a Participant's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting a Participant's Proprietary Information, provide information and assistance to Vendor or other

Participants in the investigation of Breaches and Disputes. In no case shall a Participant be required to disclose PHI in violation of Applicable Law. In seeking another Participant's cooperation, each Participant shall make all reasonable efforts to accommodate the other Participant's schedules and operational concerns. A Participant shall promptly report, in writing to any other Participant, and Vendor, any problems or issues that arise in working with the other Participant's employees, agents, or subcontractors that threaten to delay or otherwise adversely impact a Participant's ability to fulfill its responsibilities under this Agreement.

- e. **Backup.** Participant is responsible for developing and maintaining backup procedures to be used in the event of a failure or unavailability of the Network, and is responsible for implementing any such backup procedures, as determined necessary by Participant.

6. **Enterprise Security.**

- a. **Safeguards.** Vendor and each Participant shall be responsible for maintaining a secure environment that supports access to, use of, and the continued development of the Network. Each Participant and Vendor shall use appropriate safeguards to prevent use or disclosure of PHI by such party other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of PHI through the Network. Appropriate safeguards for Participants and Vendor shall be those identified in the HIPAA Security Rule, 45 CFR Part 160 and 164, Subparts A and C, regardless of whether Participant is subject to HIPAA Regulations. Participants shall also be required to comply with any applicable Network Operating Policies and Technical Requirements that may define expectations for Participants with respect to enterprise security.
- b. **Malicious Software.** In participating in the Network, each Participant and Vendor shall ensure that it employs security controls that meet applicable industry or Federal standards so that the information and Health Data being transmitted and any method of transmitting such information and Health Data will not introduce any viruses, worms, unauthorized cookies, Trojans, malicious software, "malware," or other program, routine, subroutine, or data designed to disrupt the proper operation of a System, the Network or any part thereof, or any hardware or software used by a Participant or Vendor in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause a System or the Network or any part thereof or any hardware, software or data used by a Participant or Vendor in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable. In the absence of applicable industry standards, each Participant and Vendor shall use all commercially reasonable efforts to comply with the requirements of this Section.
- c. **Other.** Participant will not knowingly use the Network, and will not permit any of its Participant Users to use the Network, (i) in a manner that significantly and adversely affects the performance or availability to other Participants of the Network, (ii) in a manner that interferes in any way with Vendor's computers or network security, or (iii) to attempt to gain unauthorized access to Vendor's or any Participant's computer system.

7. **Breach Notification.**

- a. **Procedure for Notification of Vendor and Impacted Participants.** Each party to this Agreement agrees that without unreasonable delay but not later than two (2) business days after determining that a Breach occurred, the party responsible for the Breach will notify AHCA, the Vendor and all Participants likely impacted by the Breach of such Breach. The notification should include sufficient information for the other notified parties to understand the nature of the Breach. For instance, such notification could include, to the extent available at the time of the notification, the following information:
- i. One or two sentence description of the Breach
 - ii. Description of the roles of the people involved in the Breach (e.g., employees, Participant Users, service providers, unauthorized persons, etc.)
 - iii. The type of PHI Breached
 - iv. Participants likely impacted by the Breach
 - v. Number of Individuals or records impacted/estimated to be impacted by the Breach
 - vi. Actions taken by the Participant to mitigate the Breach
 - vii. Current status of the Breach (under investigation or resolved)
 - viii. Corrective action taken and steps planned to be taken to prevent a similar Breach.

The notifying party shall have a duty to supplement the information contained in the notification as it becomes available and cooperate with other Participants and Vendor, subject to Section 5(d)(v). The notification required by this Section shall not include any PHI.

- b. **Summary Notification to Non-Impacted Participants.** Vendor will notify the Participants of any Breach. Vendor will provide, in a timely manner, a summary to such Participants that does not identify any of the Participants or Individuals involved in the Breach.
- c. **Proprietary Information.** Information provided by a Participant in accordance with this Section, except Health Data, may be "Proprietary Information." Such "Proprietary Information" shall be treated in accordance with Section 11 (Proprietary Information).
- d. **Legal Obligations.** This Section shall not be deemed to supersede or relieve a party's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law, including, but not limited to, those related to Individuals. The parties shall work together to coordinate any notification to Individuals, the federal government, and any public announcement regarding the Breach that may be required by Applicable Law or the policies of a party.
- e. **Consumer Complaints.** Within two (2) business days of Vendor's receipt of specific consumer complaints about privacy and security received from consumers, Vendor will refer all such consumer complaints to the appropriate Participant to investigate as a possible breach. At the same time that Vendor refers such consumer complaints to the appropriate Participant, but not earlier, Vendor shall notify the AHCA contract manager that the consumer complaints were referred to the Participant for investigation. The Vendor shall maintain a record of the date the complaint was received, date of referral to the

appropriate Participant, description of complaints, available contact information about the consumer, and Participant and Participant Users identified in the complaint.

8. **Representations and Warranties**. The parties hereby represent and warrant the following as it applies to them respectively:

- a. **Accurate Participant Information.** Except to the extent prohibited by Applicable Law, each Participant has provided, and will continue to provide Vendor with all information reasonably requested by them necessary to discharge their duties under this Agreement or Applicable Law, including during the Dispute Resolution Process. Any information provided by a Participant to Vendor shall be responsive and accurate, including any information provided by Participant during any registration process for a particular service; however, this representation shall not extend to any Health Data. Each Participant shall provide notice to Vendor if any information previously provided by the Participant (other than Health Data) materially changes. Each Participant acknowledges that Vendor reserves the right to confirm or otherwise verify or check, in its sole discretion, the completeness and accuracy of any registration or other information provided by Participant at any time and each Participant will reasonably cooperate with Vendor in such actions, given reasonable prior notice. Notwithstanding the foregoing, Vendor is entitled to rely on the accuracy of information provided by each Participant, and Vendor has no duty to confirm, verify, or check the completeness and accuracy of any information.
- b. **Execution of this Agreement.** Prior to participating in the Network, each Participant shall have executed a Subscription Agreement and returned an executed copy to Vendor. In doing so, the Participant affirms that it has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals and consents in order for it to execute this Agreement. The representative signing this Agreement on behalf of the Participant affirms that he/she has been properly authorized and empowered to enter into this Agreement on behalf of the Participant. Similarly, Vendor affirms that its representatives signing this Agreement are duly authorized and that Vendor has full power and authority to enter into and perform this Agreement.
- c. **Agreements with Subcontractors.** To the extent that a Participant uses subcontractors in connection with the Network or its use of Health Data obtained from the Network, each Participant affirms that it has valid and enforceable agreements with each of its subcontractors that require the subcontractor to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of any Health Data to which it has access; (iii) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Participant; and (iv) reasonably cooperate with Vendor and the other Participants to this Agreement on issues related to the Network, under the direction of Participant.
- d. **Accuracy of Health Data and Authority to Transmit, Receive and/or Disclose (as applicable).** Each Participant hereby represents that at the time of transmission, that (i) the Health Data it provides pursuant to its Subscription Agreement is an accurate representation of the data contained in or available through its System subject to the limitations set forth in Section 9.d. (Incomplete Medical Record), (ii) the Health Data it provides is sent from a System that employs security controls that meet industry standards

so that the information and Health Data being transmitted are intended to be free from malicious software in accordance with Section 6.b. (Enterprise Security, Malicious Software), (iii) the Health Data it provides is provided in a timely manner and in accordance with applicable Network Operating Policies and Technical Requirements, (iv) that Participant is authorized to provide or make such Health Data available through the Network under the terms of this Agreement without violating any rights, including copyrights, of third parties, and (v) that Participant has met any requirements under Applicable Law including but not limited to obtaining any consent or authorization(s) from the individual who is the subject of the Health Data, or their legally authorized representative, if required, before making a request for such individual's Health Data through the Network. OTHER THAN THE REPRESENTATIONS IN THIS PARAGRAPH, NEITHER VENDOR NOR PARTICIPANT MAKE ANY OTHER REPRESENTATION, EXPRESS OR IMPLIED, ABOUT THE HEALTH DATA. MORE SPECIFICALLY, THE HEALTH DATA MADE AVAILABLE THROUGH THE NETWORK IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE PARTICIPANT OR AHCA OR VENDOR BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTICIPANT, AHCA AND/OR VENDOR HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTICIPANT, VENDOR AND AHCA DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS, OR OTHER THIRD PARTIES OR DUE TO HARDWARE OR SOFTWARE FAILURES.

- e. **Absence of Final Orders.** Each party hereby represents and warrants that, as of the Effective Date, it is not subject to a final order issued by any Federal, State, local or international court of competent jurisdiction or regulatory or law enforcement organization, which will materially impact the party's ability to fulfill its obligations under this Agreement. Each party shall inform the Vendor if at any point during its participation in the Network it becomes subject to such an order; Vendor will inform all Participants if a Participant informs Vendor that the Participant is subject to such an order.

9. **Disclaimers.**

- a. **Accuracy of Patient Record Matching.** Each Participant acknowledges that there could be errors or mismatches when matching patient identities between disparate data sources, but Vendor will take commercially reasonable measures to help ensure accurate patient matching occurs, if Vendor is involved in matching for the particular service to which Participant is subscribed. Participant is solely responsible for ensuring that any PHI obtained through the Network relates to a particular Individual as intended by the Participant and for the immediate destruction of any PHI obtained inadvertently.

- b. **Accuracy of Health Data.** Nothing in this Agreement shall be deemed to impose responsibility or liability on a Participant or on Vendor or AHCA related to the clinical accuracy, content or completeness of any Health Data provided pursuant to this Agreement.
- c. **Reliance on a System.** Participants may not rely upon the availability of a particular Participant's Health Data, if such Health Data is provided as part of the particular service to which Participant is subscribed.
- d. **Incomplete Medical Record.** Each Participant acknowledges that Health Data may not include the Individual's full and complete medical record or history.
- e. **Use of Network in an Emergency.** Participant and Participant Users are responsible for determining the appropriate use of the Network for communications or transactions concerning or supporting treatment in an emergency or other urgent situation. Further, to the extent that a Participant needs patient information in an emergency or on an urgent basis, Participant and Participant Users retain sole responsibility for communicating directly to any provider, including Participants according to Participant's own policies and procedures, and Participant agrees that it will not rely upon the Network or the Vendor for delivery of such messages or to obtain patient information.
- f. **Patient Care.** Health Data obtained through the Network is not a substitute for any Participant or Participant User, if that person/entity is a health care provider, obtaining whatever information he/she/it deems necessary, in his/her professional judgment, for the proper treatment of a patient. The Participant or Participant User, if he/she/it is a health care provider, shall be 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 Network or Health Data made available thereby. None of the Participants or Vendor, by virtue of executing this Agreement, assumes any role in the care of any patient.
- g. **Carrier Lines.** All Participants acknowledge that the exchange of Health Data between Participants through the Network is to be provided over various facilities and communications lines, and information shall be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which may be beyond the Participants' or Vendor's control. Provided a Participant and Vendor use reasonable security measures, no less stringent than those directives, instructions, and specifications contained in this Agreement, the Participants and Vendor assume no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted over those carrier lines, which are beyond the Participants' and Vendor's control, or any delay, failure, interruption, interception, loss, transmission, or corruption of any Health Data or other information attributable to transmission over those carrier lines which are beyond the Participants' and Vendor's control. Use of the carrier lines is solely at the Participants' and Vendor's risk and is subject to all Applicable Laws.

10. **License to Common Network Resources.** Participant is hereby granted a nonexclusive, nontransferable, revocable and limited license to Common Network Resources solely for use as a Participant under this Agreement. Participant shall not (a) sell, sublicense, transfer, exploit or, other than pursuant to this Agreement, use any Common Network Resources for Participant's own financial benefit or any commercial purpose, or (b) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code to any Common Network Resources. THE COMMON NETWORK RESOURCES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.
11. **Proprietary Information.** Each Receiving Party shall hold Proprietary Information in confidence and agrees that it shall not, during the term or after the termination of this Agreement, redisclose to any person or entity, nor use for its own business or benefit, any information obtained by it in connection with this Agreement, unless such use or redisclosure is permitted by the terms of this Agreement. Proprietary Information may be redisclosed under operation of law, provided that the Receiving Party immediately notifies the Discloser of the existence, terms and circumstances surrounding such operation of law to allow the Discloser its rights to object to such disclosure. If after Discloser's objection, the Receiving Party is still required by law to redisclose Discloser's Proprietary Information, it shall do so only to the minimum extent necessary to comply with the operation of the law and shall request that the Proprietary Information be treated as such.
12. **Business Associate Provisions.** This Section 12 shall only apply in the event that a Participant is a Covered Entity. Vendor is hereby a Business Associate of any such Covered Entity Participant and this Section 12 applies if and to the extent that Vendor meets the definition of Business Associate with respect to such Covered Entity Participant.

a. **Limits on Use and Disclosure.**

- i. **Use Under This Agreement.** Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law. Business Associate may use and disclose PHI to perform those functions, activities, or services that Business Associate performs for, or on behalf of, each Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate HIPAA or HITECH if done by a Covered Entity, including but not limited to accessing and transmitting PHI on the Network and maintaining the Network, and making disclosures to Participants for Permitted Purposes. Any such use or disclosure allowed by this subsection shall be limited to those reasons and those individuals as necessary to meet the Business Associate's obligations under this Agreement.
- ii. **Other Disclosures.** Business Associate will not make the following disclosures that are otherwise allowed to be made by a Covered Entity under 45 CFR § 164.512 unless compelled to do so by law or unless such a disclosure is specifically authorized or required by this Agreement:
 1. About victims or abuse, neglect, or domestic violence;
 2. For health oversight activities;

3. For judicial and administrative proceedings;
4. For law enforcement purposes;
5. About decedents;
6. For cadaveric organ, eye, or tissue donation purposes;
7. To avert a serious threat to health or safety;
8. For specialized government functions;
9. For workers' compensation purposes;
10. For marketing purposes;
11. For fundraising purposes.

If Business Associate is requested to make a disclosure for one of the foregoing reasons, it shall forward such request to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response. Business Associate shall make PHI available to the Covered Entity for the foregoing reasons if requested to do so in writing by the Covered Entity for the Covered Entity to coordinate and prepare a timely response.

- iii. **Use of PHI for Management and Administration or Legal Responsibilities of Business Associate.** Notwithstanding Section 12.a. of this Agreement, Business Associate may use and disclose PHI received by the Covered Entity pursuant to this Agreement for: (1) the proper management and administration of the Business Associate; or (2) to carry out the legal responsibilities of the Business Associate. However, the Business Associate will only be allowed to disclose PHI for the aforementioned uses if: (1) the disclosure is Required By Law; or (2) the Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required By Law and for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances in which the person is aware of a confidentiality breach of PHI.
 - iv. **Data Aggregation Services.** With respect to PHI received by the Business Associate in its capacity as the Business Associate of the Covered Entity, Business Associate may combine such PHI it has received from the Covered Entity with the PHI received by the Business Associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the Health Care Operations of the respective Covered Entities, if data analyses is part of the services that Business Associate is to provide under this Agreement, as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- b. **Safeguards.** Business Associate agrees to use reasonable and appropriate administrative, physical and technological safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. In addition, Business Associate shall implement such safeguards and security measures as are necessary to comply with the HIPAA Security Rule as set forth in 45 CFR Parts 160 and Subparts A and C of Part 164. Business Associate shall provide periodic reports to AHCA related to the security measures implemented by Business Associate for the Network, including any material security incidents that have arisen since any prior report. Such report will also be made available to any Participant, upon request. A material security incident is one that results in unauthorized access, use, disclosure,

- modification, destruction of PHI, or interference with system operations. Security incidents that do not result in such an outcome include, but are not limited to, pings on a firewall, attempts to log on to a system with an invalid password or username, malware, and denial-of-service attacks that do not result in a server being taken off-line. This Agreement constitutes notice to the Covered Entity that such unsuccessful security incidents occur.
- c. **Report of Improper Use or Disclosure.** Business Associate agrees to promptly report to a Covered Entity any use or disclosure of the Covered Entity's PHI not provided for by this Agreement of which Business Associate becomes aware. Business Associate is also subject to the requirements in Section 7 (Breach Notification) of this Agreement.
 - d. **Agents and Subcontractors.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by the Business Associate on behalf of, a Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to PHI.
 - e. **Access to Records To Fulfill Request by Individual.** Business Associate shall not respond directly to requests from Individuals for access to their PHI in a Designated Record Set. Business Associate will refer such Individuals to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response to the Individual.
 - f. **Access to Records by HHS Secretary.** Business Associate shall make its records, books, agreements and policies, and procedures relating to the administrative, physical and technical safeguards and the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the HHS Secretary for purposes of determining Covered Entity's or Business Associate's compliance with HIPAA and HITECH.
 - g. **Amendments to PHI.** Business Associate shall have no obligation to initiate or make PHI amendments to other Participants on the Network. Business Associate shall not respond directly to requests from Individuals for amendments to their PHI. Business Associate will refer such Individuals to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response to the Individual.
 - h. **Accounting of Disclosures.** See Section 2(f) of this Agreement for Business Associate's obligations regarding accounting of disclosures under 45 CFR § 164.528 and as amended by HITECH (Subtitle D Section 13405) and its implementing regulations.
 - i. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure by Business Associate in violation of the requirements of this Agreement.
13. **Qualified Service Organization Provisions.** This Section 13 shall only apply in the event that a Participant is or has a program subject to 42 CFR Part 2 or transmits Health Data from or other data about clients in a program subject to 42 CFR Part 2.

- a. **Vendor's Role.** Vendor is a Qualified Service Organization or QSO of Participant for the purpose of providing the services specified in this Agreement for Participant, which include but are not limited to data processing, holding and storing information about Part 2 program clients, receiving and reviewing requests for disclosures to third parties for Permitted Purposes under this Agreement, and/or facilitating the electronic exchange of Part 2 clients' information through the Network, as applicable for the particular service to which Participant is subscribed.
- b. **Limits on Use and Disclosure.**
 - i. The QSO shall only access Health Data or other data about clients of Participant's Part 2 program to the extent needed by the QSO to provide services to the Part 2 program described in this Agreement.
 - ii. The QSO agrees not to use or further disclose any Health Data or other Part 2 program client information other than as specified in this Agreement.
 - iii. The QSO acknowledges that in receiving, storing, processing, or otherwise using any information from the Part 2 program about the clients in the program, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.
 - iv. The QSO undertakes to resist in judicial proceedings any effort to obtain access to information pertaining to Part 2 program clients otherwise than as expressly provided for in 42 CFR Part 2, and the QSO shall notify the appropriate Participant.
 - v. Any subcontractors or agents of the QSO may only access information from a Part 2 program if the subcontractor or agent has entered into an agreement with the QSO and has agreed to the same obligations stated in this Section 13, including but not limited to being bound by 42 CFR Part 2.

14. **Liability.**

- a. **Party Liability.** As between parties to this Agreement: Each party shall be responsible for its own acts and omissions and not for the acts or omissions of any other party. In circumstances involving harm to other parties caused by the acts or omissions of individuals who access Health Data or Proprietary Information through the Network or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from Vendor, AHCA, the Participant or any of the Participant Users, each party shall be responsible for such harm to the extent that the individual's access was caused by the party's breach of the Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. Notwithstanding any provision in this Agreement to the contrary, the party shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This section shall not be construed as a hold harmless or indemnification provision. To the extent that a Participant is prohibited, by Applicable Law, from being subject to the liability outlined in this Section 14(a) (Party Liability), it shall be exempt from this Section 14(a)(Party Liability). If the Participant is an

agency of the State of Florida or otherwise enjoys sovereign immunity (a "State Participant"), the limitations on tort claims as set forth in Section 768.28, Florida Statutes, shall apply to all tort-related claims, including without limitations, all claims that the State Participant may be required to defend under the indemnification provisions of this Agreement. The Parties to this Agreement expressly agree that any State Participant's execution of the Agreement, including any indemnification obligations that may be contained in this Agreement, shall not constitute a waiver of sovereign immunity, and that the entire extent of the State Participant's liability shall not exceed the limitations on tort claims set forth in Section 768.28, Florida Statutes.

- b. **Effect of Agreement.** Except as provided in Section 8(d) (Representations and Warranties, Accuracy of Health Data and Authority to Transmit) and Section 19 (Dispute Resolution), nothing in this Agreement shall be construed to restrict AHCA's, Vendor's or a Participant's right to pursue all remedies available under Applicable Law for damages or other relief arising from acts or omissions of other parties hereto related to the Network or this Agreement, or to limit any rights, immunities or defenses to which a party may be entitled under Applicable Law.
- c. **Limited Release of Vendor Liability.** Participants hereby release Vendor from any claim arising out of any inaccuracy or incompleteness of Health Data or any delay in the delivery of Health Data or failure to deliver Health Data to the Network when requested except for those arising out of Vendor's gross negligence.

15. **Term, Suspension and Termination.**

- a. **Term.** Unless otherwise specified in the Subscription Agreement, the initial term of this Agreement shall be for a period of two years commencing on the Effective Date. Upon the expiration of the initial term, this Agreement shall automatically renew, unless prohibited by law, for successive one-year terms unless terminated pursuant to this Section 15 (Term, Suspension and Termination).
- b. **Suspension or Termination by Participant.**
 - i. **Suspension.** A Participant may voluntarily suspend its own participation in the particular service to which it is subscribed for a valid purpose, as determined by the Vendor, by giving Vendor at least twenty-four hours prior notice. Once proper notice is given, Vendor shall be empowered to suspend the Participant's access as of the date of suspension specified in the notice. Once Vendor suspends the Participant's access, Vendor shall provide notice of such voluntary suspension to all Subscribing Participants. During the suspension, neither the Participant, nor Participant Users, shall access the Network or be responsible for complying with the terms of this Agreement except those terms that survive termination of this Agreement in accordance with Section 21(g) (Survival). Any voluntary suspension shall be for no longer than five consecutive calendar days or for more than twenty calendar days during any twelve month period, unless a longer period is agreed to by the Vendor.

- ii. **Termination.** A Participant may terminate its participation in a particular service by terminating this Agreement, with or without cause, by giving Vendor at least five business days prior notice. Once proper notice is given, Vendor shall be empowered to revoke the Participant's access as of the date of termination specified in the notice. Once the Vendor revokes the Participant's access, the Vendor shall provide notice of such revocation to the remaining Subscribing Participants.

- c. **Suspension by the Vendor.** Upon the Vendor completing a preliminary investigation and determining that there is a substantial likelihood that a Participant's acts or omissions create an immediate threat or will cause irreparable harm to another party, including, but not limited to, a Participant, a Participant User, the Network, Vendor, AHCA, or an Individual whose PHI is exchanged through the Network, the Participants hereby grant to the Vendor, with concurrence by AHCA, the power to summarily suspend, to the extent necessary to address the threat posed by the Participant, a Participant's access to a particular service, pending the submission and approval of a corrective action plan, as provided in this Section. The Vendor shall immediately suspend the Participant's access to a particular service and within twelve hours of suspending Participant's access (i) provide notice of such suspension to all Subscribing Participants; and (ii) provide to the suspended Participant a written summary of the reasons for the suspension. The Participant shall use reasonable efforts to respond to the suspension notice with a detailed plan of correction or an objection to the suspension within three business days or, if such submission is not reasonably feasible within three business days, then at the earliest practicable time. If the Participant submits a plan of correction, the Vendor will within five business days review and either accept or reject the plan of correction. If the plan of correction is accepted, the Vendor will, upon completion of the plan of correction, reinstate the Participant's access to the particular service and provide notice to all Subscribing Participants of such reinstatement. If the plan of correction is rejected, the Participant's suspension will continue, during which time the Vendor and the Participant shall work in good faith to develop a plan of correction that is acceptable to both the Participant and the Vendor. At any time after the Vendor rejects a Participant's plan of correction, either the Participant or the Vendor may submit a Dispute to the Dispute Resolution Process described in Section 19 (Dispute Resolution). If the Vendor and the Participant cannot reach agreement on a plan of correction through the Dispute Resolution Process, the Vendor may terminate the Participant in accordance with Section 15(d) (Termination by the Vendor). Nothing in this Agreement obligates the Vendor to investigate or audit any Participant's compliance with this Agreement or Applicable Law.

- d. **Termination by Vendor.** Vendor may terminate, with concurrence by AHCA, a Participant's access to a particular service and this Agreement with respect to a Participant as follows:
 - i. After taking a suspension action in accordance with Section 15(c) (Suspension by the Vendor) when there is a substantial likelihood that the Participant's acts or omissions create an immediate threat or will cause irreparable harm to another party including, but not limited to, a Participant, a Participant User, the Network, Vendor, AHCA, or an Individual whose PHI is exchanged through the Network;

- ii. In the event that the Participant has materially breached this Agreement and has not cured such material breach after ten business days' notice that includes a detailed description of the alleged material breach;
- iii. Immediately in the event that the Participant violates this Agreement's provisions regarding protection of AHCA's or Vendor's Proprietary Information; or
- iv. Without cause, AHCA may terminate all Participants, Vendor and this entire Agreement upon thirty (30) days' written notice to all parties.

A Participant whose access is revoked by virtue of termination may appeal such revocation through the Dispute Resolution Process. However, during the pendency of any such appeal, the Participant's access to the particular service may continue to be revoked at the discretion of the Vendor.

- e. **Termination of Vendor.** Vendor is engaged by AHCA for its role in this Agreement. AHCA may terminate Vendor under the terms of that engagement, and shall give written notice to all Participants of any such termination. If AHCA terminates Vendor, then Vendor's rights under this Agreement also terminate, except for rights that expressly survive termination. AHCA may engage another organization to fulfill the duties of Vendor under this Agreement, as long as such other organization: 1) agrees to comply with the duties of Vendor under this Agreement, 2) executes this Agreement as Vendor, and 3) is approved by the Participants, which approval shall not be unreasonably withheld or delayed.
- f. **Effect of Termination.** Upon any termination of this Agreement for any reason, the terminated party shall cease to be a Participant and thereupon and thereafter neither that party nor its Participant Users shall have any rights to use the Network (unless such Participant Users have an independent right to access the Network through another Participant). Vendor shall revoke a terminated Participant's access to particular service and provide notice of such Participant's access to the remaining Subscribing Participants. As an exception to the foregoing, termination of a Participant for one subscribed service would not necessarily terminate Participant from another subscribed service, if Participant had subscribed to more than one service on the Network. In the event that any Participant(s) are terminated, this Agreement will remain in full force and effect with respect to all other Subscribing Participants. Certain provisions of this Agreement survive termination, as more fully described in Section 21(g) (Survival).
- g. **Disposition of Health Data Upon Termination.** At the time of termination, Recipient (other than Vendor) may, at its election, retain Health Data on Recipient's System (if applicable) in accordance with the Recipient's document and data retention policies and procedures, Applicable Law, and this Agreement, including Section 3(c) (Permitted Future Uses (Re-Disclosure)). Vendor shall terminate access to or from a terminated Participant's system on the termination date for that Participant; however, Vendor may retain audit trail data for a terminated Participant for a period of time for legal defense purposes in accordance with the document and data retention policies stated in the applicable Network Operating Policies and Technical Requirements. If the Vendor is terminated pursuant to this Agreement, or terminated by AHCA, or this Agreement is terminated in its entirety, then

Vendor (including any of its subcontractors or agents) shall no longer access or transmit any data to or receive data from Participants' respective systems, and further Vendor will no longer access, use or store any Health Data and shall comply with a transition plan approved by AHCA, or if none is agreed upon, Vendor will delete or destroy (and certify such destruction to AHCA and Participants) of any data, including but not limited to any Health Data; however, if Vendor determines that returning or destroying PHI is not feasible, then Vendor must maintain the privacy protections under the Business Associate, Qualified Services Organization and other provisions of this Agreement relating to protection of Health Data and according to Applicable Law for as long as Vendor retains the PHI, and Vendor may only use or disclose the PHI for the specific uses or disclosures that make it necessary for Vendor to retain the PHI. If Vendor determines that it is infeasible for Vendor to obtain PHI in its subcontractor or agent's possession, Vendor must provide a written explanation to all parties of such reasons and require its subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to its subcontractors or agents' use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses or disclosures for the purposes that make the return or destruction of the PHI infeasible.

16. **Insurance.**

- a. **Insurance by Vendor.** The Vendor shall maintain Workers Compensation insurance and Commercial General Liability insurance including bodily injury, property damage, personal and advertising injury and products and completed operations. This insurance will provide coverage for all claims that may rise from the services and/or operations completed under this Agreement, whether such services and/or operations are by the Vendor or anyone directly employed or engaged by it (including, but not limited to, its subcontractors). Such insurance shall name AHCA and all Participants as additional insureds on the Commercial General Liability policy. Vendor will provide that AHCA receive written notice prior to any cancellation, modification or termination of such insurance, and AHCA will promptly notify all Participants of any such notices. The Vendor will maintain professional liability insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) and network risks (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in the performance of its services. Vendor reserves the right to self-insure any of the required coverages in this section, provided that such self-insurance meets all regulatory requirements.
- b. **Insurance by Participants.** Each Participant shall carry insurance in an amount sufficient to cover its obligations hereunder; however, each Participant reserves the right to self-insure to meet the obligation of coverage in this section, provided that such self-insurance meets all regulatory requirements.

17. **Indemnification.**

- a. **Indemnification by Participants.** Participant will indemnify and hold harmless the Vendor and other Participants, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising

directly from Participant's or Participant's Users' breach of this Agreement, including the unauthorized or improper use of the Network or Participant's or Participant's Users' use or disclosure of Health Data for any purpose other than a Permitted Purpose. The Participant will not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). The foregoing indemnity shall apply only to the extent of the willful misconduct or gross negligence of the Participant or Participant User.

b. Indemnification by Vendor.

- i. **For Breach.** Vendor will indemnify and hold harmless Participants, Participant Users, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising directly from Vendor's breach of this Agreement, including the unauthorized or improper use of the Network or Vendor's use or disclosure of Health Data for any purpose other than a Permitted Purpose or as otherwise allowed under this Agreement. The Vendor shall not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). The foregoing indemnity shall apply only to the extent of the willful misconduct or gross negligence of the Vendor.
- ii. **For Infringement.** Vendor will indemnify and hold harmless Participants, Participant Users, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties that the use of the Network or any Common Network Resource or software provided by Vendor infringes any patents, copyrights or trademarks or is a misappropriation of trade secrets, provided that Participant notifies Vendor in writing promptly upon discovery of any such claims and gives Vendor complete authority and control of, and full cooperation with, the defense and settlement of such claim. The Vendor shall not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits).

- c. **Indemnification in General.** In the event a suit is brought against a party to this Agreement under circumstances where Section 17(a) (Indemnification by Participants) or 17(b) (Indemnification by Vendor) applies (the "sued party"), the indemnifying party, at its sole cost and expense, shall defend the sued party in such suit if written notice thereof is promptly given to the indemnifying party within a period wherein the indemnifying party is not prejudiced by lack of such notice. If indemnifying party is required to indemnify and defend, it will thereafter have control of such litigation, but the indemnifying party may not enter into any settlement or other agreement with respect to any claim that imposes any duty or obligation on the sued party, or provides for an admission of fault on the part of the sued party, without the prior written consent of the sued party, which consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the sued party; and the indemnifying party, in defending any action on behalf of the sued party, shall be entitled to assert in any action every defense or immunity that the sued party could assert in its own behalf. This indemnification not only applies to civil suits filed against the sued party, but also to administrative actions and civil penalties on the sued party imposed by state or federal government agencies that may result from breach of this Agreement by the indemnifying party. Any action or claim against

the indemnifying party must be brought in writing within one (1) year from the date of filing of the claim by the third party against the sued party, otherwise the indemnity is invalid.

- d. **Exception for Certain Participants.** The obligation to indemnify in this Section 17 (Indemnification) shall not apply to any Participant who is barred by statute or other Applicable Law from indemnifying another party. In the case of a State Participant, the provisions of Section 768.28, Florida Statutes, relating to sovereign immunity shall govern. In addition, a State Participant's indemnification obligations shall be no greater than the limitations on tort claims as set forth in Section 768.28, Florida Statutes, and treated as if the tort claims prompting the Vendor or other Participants to invoke the indemnification obligation had been asserted against the State Participant directly. In the event that any third parties asserts claims against the State Participant and the Vendor and/or other Participants, the State Participant's aggregate obligations shall not exceed the limitations on tort claims as set forth in Section 768.28, Florida Statutes. Nothing in this Agreement shall be construed as a waiver of sovereign immunity or consent by a state agency or political subdivision to suit by third parties.

18. **General Fee Terms for Services.** Any fees payable for each service offered are provided in the applicable Subscription Agreement, as amended from time to time by Vendor. Unless expressly modified in the Subscription Agreement for a specific service, the following terms apply to payment of fees.

- a. **Taxes.** All fees and other charges for subscribing to a particular service shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and the Participant shall pay any tax (excluding taxes on Vendor's net income) that Vendor may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items or services provided pursuant to this Agreement.
- b. **Third Party Fees and Charges.** The Participant will be solely responsible for any other charges or expenses the Participant may incur to access or use the service, including without limitation, Carrier Line and equipment charges, and fees charged by vendors of third party products that may be included and specified in a Subscription Agreement to which Participant has executed.
- c. **Failure to Pay Fees.**
- i. **Interest on Late Payments.** Fees not paid for the service by the due date set in the Subscription Agreement(s) executed by Participant shall bear interest at the rate of one and a half percent (1.5%) per month or the highest legal rate of interest, whichever is lower. The accrual of such interest shall not affect the rights and remedies of Vendor under this Agreement.
- ii. **Suspension of Service.** In the event fees are not paid by thirty (30) days following the due date (or, in the event the Participant disputes any portion of the fees due), Vendor may suspend the Participant's access to a service on thirty (30) days' prior notice. Vendor may charge a reasonable renewal fee to cover its costs and overhead

associated with restoring a suspended service after suspension due to non-payment.

- iii. Collection. In the event that payment due to Vendor is collected at law or through an attorney-at-law, or under advice therefrom, or through a collection agency, Participant agrees to pay all costs of collection, including without limitation all court costs and reasonable attorneys' fees.

19. **Dispute Resolution**.

- a. **General**. The parties acknowledge that it may be in their best interest to resolve Disputes through an alternative dispute resolution process rather than through civil litigation. The parties have reached this conclusion based upon the fact that the legal and factual issues involved in this Agreement are unique, novel, and complex, and limited case law exists which addresses the legal issues that could arise from this Agreement. Therefore, the parties shall submit Disputes related to this Agreement to the Dispute Resolution Process in the next Section 19(b). Except in accordance with Section 19(c) (Immediate Injunctive Relief), if a party refuses to participate in the Dispute Resolution Process, such refusal shall constitute a material breach of this Agreement and shall be grounds for termination.
- b. **Dispute Resolution Process**:
 - i. Notice of Dispute. When a Dispute arises, a party will send notice, in accordance with the notice provision of the Agreement, to the other parties to this Agreement involved in the Dispute. The notice must contain a summary of the issue as well as a recommendation for resolution. The party must send a copy of the notice to the Vendor and AHCA for informational purposes.
 - ii. Informal Conference. Within thirty calendar days of receiving the notice, the parties involved in the Dispute are obligated to meet and confer with each other, at least once in good faith and at a mutually agreeable location (or by telephone), to try to reach resolution (the "Informal Conference"). If the parties to the Dispute reach a resolution at the Informal Conference, they will provide notification to that effect to the Vendor and AHCA. The parties agree that if any party refuses to participate in such Informal Conference, or if the Informal Conference fails to produce a mutually acceptable resolution of the Dispute within thirty (30) calendar days after the parties' receipt of notice of the Dispute, the other party or parties may submit the matter to mediation or arbitration pursuant to this Section 19(b).
 - iii. Mediation. In the event a Dispute arises between or among the parties that cannot be settled by Informal Conference as set forth above, the parties may, on mutual agreement, submit the matter to mediation to be conducted in a mutually agreeable location in Florida. The process for selecting the mediator shall be determined by the mutual written consent of the parties. If the parties fail to agree to a process within ten (10) calendar days from a request, the requesting party may proceed to invoke the arbitration process provided for herein. The consent of any party to such mediation may be withdrawn at any time, without cause. If the parties

to the Dispute reach a resolution at the mediation, they will provide notification to that effect to the Vendor and AHCA.

- iv. **Binding Arbitration.** The parties agree that any Dispute which cannot be resolved between or among them after following the Dispute Resolution Process set forth in this Section shall be subject to mandatory and binding arbitration before a single arbitrator. The arbitration shall be conducted by and according to the American Health Lawyers' Association's Alternative Dispute Resolution Service ("AHLA – ADR") Rules of Procedure for Arbitration, and judgment on the award by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in such location as mutually agreed upon by the parties; provided, if the parties fail to agree within ten days of the request for arbitration, the location shall be determined by the arbitrator. Each party involved shall be responsible for the costs and fees of its attorneys, accountants, consultants and other costs incurred in the preparation and presentation of its position at arbitration. The parties to the Dispute shall bear equally the cost of the arbitrator and those costs common to multiple parties. In the event the prevailing party is required to seek enforcement of any arbitrator's decision in a court of competent jurisdiction, the party ultimately prevailing in any appeal thereof shall have the costs and fees of its attorneys, accountants, and other consultants incurred in prosecuting such appeal and post judgment collection costs paid by the non-prevailing party or parties. If the arbitrator requires the assistance of a financial or accounting expert to carry out his duties under this Section, then the parties to the Dispute shall have the equal obligation to pay for such experts.
- c. **Immediate Injunctive Relief.** Notwithstanding the prior Section, a party may be relieved of its obligation to participate in the Dispute Resolution Process if such party (i) believes that another party's acts or omissions create an immediate threat to the confidentiality, privacy or security of Health Data exchanged through the Network or will cause irreparable harm to the Network or another party (Participant, Participant User, Vendor, AHCA or Individual) and (ii) pursues immediate injunctive relief against such other party in a court of competent jurisdiction. The party pursuing immediate injunctive relief must notify AHCA and the Vendor of such action within twenty-four hours of filing for the injunctive relief and of the result of the action within twenty-four hours of learning of the same. If the injunctive relief sought is not granted and the party seeking such relief chooses to pursue the Dispute, the parties must then submit to the Dispute Resolution Process.
- d. **Activities During the Dispute Resolution Process.** Pending resolution of any Dispute under this Agreement, the parties agree to fulfill their responsibilities in accordance with this Agreement, unless the party is a Participant and voluntarily suspends its participation in the Network in accordance with Section 15(b) (Suspension or Termination by Participant), or is suspended in accordance with Section 15(c) (Suspension by Vendor).
- e. **Implementation of Agreed Upon Resolution.** If, at any point during the Dispute Resolution Process, all of the parties to the Dispute accept a proposed resolution of the Dispute, the parties agree to implement the terms of the resolution in the agreed upon timeframe.

- f. **Exceptions for Certain Participants.** The obligation to engage in binding arbitration in this Section 19 (Dispute Resolution) shall not apply to any Participant who is barred by statute or other Applicable Law from engaging in binding arbitration with another party. Binding arbitration pursuant to this section shall not apply to the rights of action involving the state or its agencies or subdivisions or the officers, employees, or agents thereof pursuant to Section 768.28. If the Participant is an agency of the State of Florida, the provisions of Section 768.28, Florida Statutes, relating to sovereign immunity shall govern.
20. **Notices.** All notices to be made under this Agreement shall be given in writing to the appropriate party's representative at the address listed in the Subscription Agreement, and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by U.S. Postal Service Certified Mail, return receipt requested; or (iii) if by transmission nationally recognized overnight courier service that has the capability to track the notice, upon receipt. **ANY NOTICE GIVEN TO, OR BY, VENDOR MUST ALSO BE COPIED TO AHCA.**
21. **Miscellaneous/General.**
- a. **Governing Law.** In the event of a Dispute between or among the parties arising out of this Agreement, Florida law will govern the operation of the parties involved in the Dispute, excluding its conflicts of law rules.
- b. **Changes to Applicable Law.** Any new legislation or amendments to government regulations or administrative rules that become effective after the Effective Date of this Agreement shall be mutually agreed to by AHCA, the Vendor and Participants as to the applicability of the change to this Agreement. Upon mutual agreement of the parties, a written amendment will subsequently be made to this Agreement to incorporate the requisite change(s).
- c. **Entire Agreement.** This Agreement sets forth the entire and only agreement among Vendor and the Participants relative to the subject matter hereof and supersedes all previous negotiations and agreements, whether oral or written. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon Vendor or any Participant.
- d. **Amendment.** Except for changes to any fees charged by Vendor in the Subscription Agreement (if any), and changes to Network Operating Policies and Technical Requirements for the particular service, made in accordance with Section 4 (Network Operating Policies and Technical Requirements), this Agreement may be amended only by an instrument in writing signed by the party against whom the change, waiver, modification, extension, or discharge is sought, unless otherwise indicated in this Agreement.
- e. **Assignment.** No party shall assign or transfer this Agreement, or any part thereof, without the express written consent of Vendor. Any assignment that does not comply with the requirements of this Section shall be void and have no binding effect.
- f. **Additional Participants.** Upon AHCA and the Vendor's acceptance of a new participant in the Network, Vendor will coordinate for the new Participant to execute and become bound by this Agreement. To accomplish this, the new participant will enter into a Subscription

Agreement, pursuant to which the new participant agrees to be bound by this Agreement. The Participants, Vendor and AHCA agree that upon execution of the Subscription Agreement by a duly authorized representative of Vendor, all then-current Participants shall be deemed to be signatories to such Subscription Agreement with the result being that current Participants and the new participant are all bound by the Agreement and obligated to each other in accordance with its terms. The new participant shall not be granted the right to participate in the particular service until both it and Vendor execute the Subscription Agreement.

- g. **Survival.** The provisions of Sections 3(c) (Permitted Future Uses (Re-Disclosure)), 3(d) (Management Uses), 7 (Breach Notification), 11 (Proprietary Information), 14 (Liability), 15(g) (Disposition of Health Data Upon Termination), 17 (Indemnification), 19 (Dispute Resolution) and any other provisions of this Agreement that by their nature or by express statement shall survive, shall survive the termination of this Agreement for any reason. In addition, any Participant obligation to pay fees to Vendor shall survive termination of this Agreement and the terms of Section 18 (General Fee Terms for Service) shall survive and apply, as needed.
- h. **Waiver.** No failure or delay by any party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.
- i. **Validity of Provisions.** In the event that a court of competent jurisdiction shall hold any Section, or any part or portion of any Section of this Agreement, invalid, void or otherwise unenforceable, each and every remaining Section or part or portion thereof shall remain in full force and effect, as long as the original intent of the Agreement would not thereby be frustrated.
- j. **Priority.** In the event of any conflict or inconsistency between a provision in the General Terms and Conditions of this Agreement and the body of the Subscription Agreement, the terms contained in the body of the Subscription Agreement shall prevail.
- k. **Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify, or aid in the interpretation or construction of meaning of the provisions of this Agreement. All references in this instrument to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Agreement. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision.
- l. **Relationship of the Parties.** The parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the parties. No party hereto shall have any authority to bind or make commitments on behalf of one another, nor shall any such party hold itself out as having such authority. No party to this Agreement shall be held liable for the acts or omissions of another party hereto.

- m. **Third-Party Beneficiaries.** With the exception of the parties to this Agreement and AHCA, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.
- n. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the Participant whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.
- o. **Force Majeure.** A party shall not be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (i) severe weather or storms; (ii) earthquakes or other disruptive natural occurrences; (iii) strikes or other labor unrest; (iv) power failures; (v) nuclear or other civil or military emergencies; (vi) terrorist attacks; (vii) acts of legislative, judicial, executive, or administrative authorities; or (viii) any other circumstances that are not within its reasonable control. This Section shall not apply to obligations imposed under Applicable Law.
- p. **Time Periods.** Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of the Vendor and the affected party(ies).