

**PENNSYLVANIA EHEALTH PARTNERSHIP PROGRAM
UNIFORM PARTICIPANT AGREEMENT v.4**

This Uniform Partnership Agreement (“Agreement” or “PAR”) effective the ____ day of _____, _____ (the “Effective Date”) is by and between the Commonwealth of Pennsylvania (“Commonwealth”), through the Department of Human Services (“Department” or “DHS”), and _____, a _____ located in _____, with a principal place of business at _____ (“Certified Participant” or “CP”), and all other CP signatories to individual copies of this Agreement, each executed by it and the Department. All Agreement signatories are referred to together as the “Parties.”

WITNESSETH

WHEREAS, the Pennsylvania eHealth Partnership Authority (“Authority”) was created pursuant to the Pennsylvania eHealth Technology Information Act (Act of Jul. 5, 2012, P.L. 1042, No. 121 (“Act 121”). Pursuant to Act 121, the Authority was responsible for the development and oversight of a statewide health information exchange (“HIE”) through which an individual may choose to allow his or her health care information to be accessed by different health care providers;

WHEREAS, Act 121 was repealed and the Pennsylvania eHealth Partnership Program (“eHealth Program”) was established as a program within DHS pursuant to the Act of Jul. 8, 2016, P.L. 480, No. 76 (“Act 76”);

WHEREAS, the Pennsylvania eHealth Partnership Program (“PA eHealth”) was established by Act 76 of 2016, 62 P.S. § 1401-C, et seq., as a program under the Department to develop, establish and maintain a “HIE” that complies with federal and state law, promotes efficient and effective communication among multiple Health Care Providers, payers and participants, creates efficiencies and promotes accuracy in the delivery of health care, and supports the ability to improve community health status;

WHEREAS, all activities initiated under Act 121, including all contracts, grants, procurement documents, and partnership agreements, were assigned to the Department;

WHEREAS, “Health Information Exchange” is conceived as a network of networks, connected by a thin layer of Services known as the Pennsylvania Patient and Provider Network (“P3N”), defined as a suite of registries and indexing and security Services which, *inter alia*, help to create a pathway between CPs;

WHEREAS, PA eHealth has undertaken as its role in this network to be the facilitator of the implementation and operation of the P3N, and of the process of certification of CPs necessary for subscription to the P3N;

WHEREAS, the CP is an organization that oversees and conducts, on its own behalf or on behalf of its Member Organizations (“MOs”), electronic transactions or exchanges of health information;

WHEREAS, the CP desires, either for itself and on behalf of its MOs, to subscribe to the P3N, and to contractually memorialize the mutual promises attendant upon its qualification to do so; and

WHEREAS, the participant has been Certified or Provisionally Certified by PA eHealth and is thereby eligible to enter into this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements and intending to be legally bound, the Parties agree as follows:

1. DEFINITIONS

Words capitalized are defined in the P3N Policy 1, Terms and Definitions.

2. NATURE AND PURPOSE OF CONTRACT

- A. This Agreement is a multi-party contract, signed in counterparts, into which the CP enters upon the CP's and PA eHealth's full execution of this Agreement. The CP shall fully cooperate with other CPs and PA eHealth. The CP shall not commit or permit any act that will make impossible compliance with this Agreement by, or diminish the value of this Agreement to, PA eHealth or any other CP.
- B. The CP is either a Covered Entity or Business Associate and is legally bound to comply with HIPAA.
- C. As a condition of participation in the P3N and Public Health Gateway ("PHG"), the CP must execute a separate copy of this Agreement.
- D. This Agreement specifically applies to the environment of the P3N, PHG, and sets forth the terms and conditions that govern CP's participation in the P3N, PHG, and the HIE Trust Community ("HIETCC").
- E. The purpose of this Agreement is to memorialize the promises and requirements associated with certification as a CP, with subscription to and use of the P3N, and with governance of the P3N and the HIETCC.
- F. The CP is responsible for all obligations under this Agreement assigned to the CP whether or not the CP provides or fulfills them directly. Further, PA eHealth and CP are the sole points of contact with regard to all contractual matters, including payment of any and all charges, resulting from this Agreement.

3. APPENDICES AND INTEGRATION OF OTHER DOCUMENTS

CP shall be bound by the attached Appendix A, Business Associate Addendum (as applicable), and the P3N Application for Participation. PA eHealth and CP shall also be bound by P3N Technical Requirements, P3N Policies, and the Health Information Organization ("HIO") Fee Model and Schedule, which are incorporated into this Agreement, the current versions of which are available at <http://www.dhs.pa.gov/provider/healthinformationexchange/hioconnection>. These documents will be updated in accordance with Section 7 (*Amendments*).

The documents comprising this Agreement ("Agreement Documents") are to be read as one integrated Agreement. All terms, including definitions, in any Agreement Document apply to all Agreement Documents unless the context clearly indicates otherwise. If any conflicts or

discrepancies should arise in the terms and conditions of this Agreement, or the interpretation, the order of precedence shall be:

- A. Any executed amendments
- B. This Agreement
- C. Appendix A, Business Associate Addendum (as applicable)
- D. The P3N Policies
- E. The P3N Technical Requirements
- F. The HIO Fee Model and Schedule
- G. P3N Application for Participation

4. IDENTIFICATION NUMBER

The CP must have an SAP vendor number.

5. TERM AND SCOPE OF AGREEMENT

- A. The term of this Agreement shall commence on the Effective Date and, provided that the CP has successfully re-certified as defined in the P3N Policies, shall automatically renew annually. This Agreement shall not be a legally binding contract until after the fully-executed Agreement has been sent to the CP.
- B. PA eHealth may execute this Agreement or any follow-up Agreement documents in ink or electronically.
- C. PA eHealth and the CP shall not start performance until each of the following has occurred: (1) the Effective Date has arrived; (2) the CP has received a copy of the fully executed Agreement; and (3) the CP has been fully certified. No DHS employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Agreement prior to the Effective Date.
- D. The CP agrees to pay for and use the requested Services as such Services are defined in this Agreement.

6. OPTION TO EXTEND

PA eHealth may, upon notice to and consent of the CP, extend the term of this Agreement for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Agreement coverage and only for the time necessary, up to three (3) months, to enter into a new Agreement.

7. AMENDMENTS

PA eHealth will provide notice of amendment to the CP. Any amendment required for compliance with Applicable Laws or regulations shall take effect automatically upon the Effective Date thereof, as stated in PA eHealth's notice to the CP. For any other type of amendment, PA eHealth may amend any Agreement documents upon thirty (30) Days' prior written notice to the CP. For amendments requiring a thirty (30) calendar Days comment period, the CP shall have the option of accepting or rejecting the amendment by written notice to PA eHealth. If the CP does not object to

the amendment in writing within the thirty (30) calendar Days period, such amendment shall automatically take effect upon the Effective Date specified in PA eHealth's notice of such amendment. If the CP does object, PA eHealth may in its discretion elect either (a) not to implement such amendment with respect to the CP that has objected, or (b) terminate the CP's Agreement on the Effective Date of such amendment. All amendments will follow the procedures outlined in the P3N Policy 2, Documentation Change Management.

8. SUSPENSION AND TERMINATION OF AGREEMENTS

- A. **Suspension by PA eHealth.** If PA eHealth completes a preliminary investigation and determines that there is a substantial likelihood that the CP's acts or omissions create an immediate threat or will cause irreparable harm to another party, including, a CP, an Authorized User, the P3N, PHG, or an individual whose PHI is exchanged through the P3N, PA eHealth may summarily suspend CP, to the extent necessary to address the threat posed, pending the submission and approval of a corrective action plan, as provided for in this Section. Upon suspension and within twelve (12) hours of suspending a CP's participation in the P3N, PA eHealth shall (1) provide notice of such suspension to all P3N participants; and (2) provide to the suspended CP a written summary of the reasons for the suspension. The CP shall use reasonable efforts to respond to the suspension notice with a detailed plan of correction or an objection to the suspension within three (3) business Days or, if such submission is not reasonably feasible within three (3) business Days, then at the earliest practicable time. If the CP submits a plan of correction, PA eHealth will within five (5) business Days review and either accept or reject the plan of correction. If the plan of correction is accepted, PA eHealth will, upon completion of the plan of correction, reinstate the CP and provide notice to all P3N participants of such reinstatement. If the plan of correction is rejected, the CP's suspension will continue, during which time PA eHealth and CP shall work in good faith to develop a plan of correction that is acceptable to both Parties. At any time after PA eHealth rejects a CP's plan of correction, either the CP or PA eHealth may submit a Dispute in accordance with the Dispute Resolution Process described in Section 18. If PA eHealth and CP cannot reach agreement on a plan of correction through the Dispute Resolution Process, PA eHealth may terminate the CP in accordance with Section 8.D.
- B. **Termination for Convenience.** Any Party may terminate this Agreement for convenience, upon sixty (60) calendar Days prior written notice. Any termination by PA eHealth will be effective at the end of the CP's quarterly payment period as specified in the notice. Upon any CP termination, PA eHealth will notify all other CPs of such termination. Any termination for convenience is a removal of the terminated Party as a Party to this multi-party Agreement, and may be preceded by the Dispute Resolution Process as described in Section 18 if requested by the terminated Party.
- C. **Termination Incident to Termination of the P3N.** PA eHealth may terminate any or all Agreements at any time incident to a termination or planned termination of the operation of the P3N for any reason. PA eHealth will provide the maximum amount of notice reasonably feasible.
- D. **Termination for Breach.** Any CP may terminate ("Terminating Party") this Agreement at any time if another CP or to the PA eHealth to the Agreement ("Breaching Party") materially breaches any of its obligations arising thereunder and fails to cure that breach within thirty (30) Days following receipt of written notice of that breach from the

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Terminating Party; except if the nature of a curable breach (other than a breach of an obligation to pay money) precludes its cure within that thirty (30) Day period, and if the Breaching Party commences the cure within that thirty (30) Day period and diligently and continuously proceeds to cure that breach, and the breach is cured within a reasonable period of time, then that Agreement shall not be terminated based on the breach.

- E. **Effect of Termination.** Upon any termination of an Agreement, all licenses granted to the CP that are not specifically stated to be perpetual shall cease and terminate. Any fees due at time of termination shall remain due until paid in full.
- F. **Appeals.** A CP terminated pursuant to this Section 8 that has availed itself of the Dispute Resolution Processes set forth in Section 18, may appeal its termination to DHS Secretary or designee provided that such terminated CP has provided written notice of its request for appeal to the Secretary no later than fourteen (14) calendar Days after receipt of notice of termination. Appeals shall be heard by DHS Secretary or designee as promptly as possible but no later than thirty (30) calendar Days after receipt of a request for an appeal.
- G. **Survival of Provisions.** In addition to terms where survival is otherwise specified, the following Sections of this Agreement shall survive termination of this Agreement: Section 8 (*Suspension and Termination of Agreements*); Section 1.B (*Compliance with Laws and Regulations*); Section 1.CD (*Privacy and Security of PHI*); Section 12.B (*Compliance with Laws and Regulations*); Section 12.C (*Permitted Use of Protected Health Information*); Section 14 (*Confidential Information and Protected Health Information*); Section 16 (*Disclaimers*); Section 18 (*Dispute Resolution*); Section 21 (*Liability*); and Section 30 (*General Terms*).

9. P3N SERVICES SUBSCRIPTION AND PAYMENT

- A. The CP shall make payment by the required payment date. The required payment date is thirty (30) calendar Days after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in this Agreement.
- B. The CP shall make payment as laid out in the HIO Fee Model and Schedule, and available online http://www.dhs.pa.gov/cs/groups/webcontent/documents/document/c_256395.pdf. All fees paid under this Agreement will be non-refundable.
- C. PA eHealth may change the fees. The HIO Fee Model and Schedule details the process to be used for any such change to the fees.
- D. Except as expressly provided in this Agreement, PA eHealth and the CP shall bear their own costs and expenses relating to their performance of their respective roles and responsibilities pursuant to their respective participation in the P3N and PHG.
- E. Services available to CPs through PA eHealth and the P3N are detailed below and in the HIO Fee Model and Schedule.

10. SERVICES PROVIDED BY PA EHEALTH THROUGH THE P3N

- A. **Opt-Out Registry (patient choice).** A single, easily accessed registry and repository for patients to make consent choices across the P3N, using a statewide PA eHealth consent

decision form. The P3N, by default, permits Access to information to allow exchange of clinical documents. To prevent their clinical documents from being exchanged through the P3N, patients must explicitly provide notice that they do not want to participate consistent with state law and P3N policies (“opt-out”). Once a patient has opted-out, queries against the P3N for clinical records only return consent decision documents and the patient’s clinical records cannot be retrieved through the P3N.

B. **Master Patient Index (MPI)**. Statewide patient identity management that achieves global patient identification, enabling consent management and clinical document exchange. The MPI:

1. Allows HIOs to register patient identifiers they use in their domain in the P3N MPI;
2. Maintains all systems’ patient identifiers in a single location;
3. Includes patient demographics and IDs for the purpose of matching patients with medical records maintained by disparate systems;
4. Contains the sum of collected MPI Data from all contributing HIOs and links these identities to form a composite view of a patient. The composite is identified by a P3N patient ID linking all HIO patient IDs;
5. Is fed with patient IDs and demographic Data from HIOs and queried for P3N patient IDs using Integrating the Healthcare Enterprise (“IHE”) specifications and HL7 messaging standards and transactions; and
6. Can only be Accessed directly by PA eHealth personnel for administrative purposes and the contracted P3N vendor for maintenance purposes.

C. **Record Locator Service (RLS)**. For those HIOs who choose to register their clinical documents in the P3N, the RLS supports semantic interoperability by defining clinical document metadata using agreed upon code value-sets. The RLS:

1. Is standards based on the Electronic Business using eXtensible Markup Language (ebXML 3.0) Registry Information Model;
2. Is well described in IHE Cross Document Sharing specifications;
3. Is an index that points to documents that can be retrieved from CP repositories;
4. Provides metadata code enforcement for consistency using agreed upon code value-sets;
5. Provides the foundation for an integrated set of Services that ties clinical documents registered in the RLS to patients in the MPI to providers in the provider directory;
6. Offers a basis for future value-add Services such as allowing patients to share Super Protected Data with specific providers; and
7. Offers performance advantages over distributed RLS.

D. **Provider Directory**. Authoritative, state-level provider directory based on the National Plan and Provider Enumeration System and state licensure Data from Pennsylvania Department of Health and Pennsylvania Department of State. It is a standalone service that is accessed by Authorized Users from the P3N web portal. The provider directory:

1. Supports Queries against, and management of, Health Care Provider information that is shared in a directory structure;

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2. Is a structure listing two categories of providers (individual and organizational) classified by provider type, specialties, demographics, and service locations; and
 3. Will offer a subset of Data, known as White Pages, based on national IHE Healthcare Provider Directory specifications.
- E. **Admission, Discharge, Transfer (ADT) Encounter Service.** This is a real-time statewide message relay service to enable improved care coordination. The service uses ADT messages that cross regional and business network barriers to enable better patient care. ADTs travel via the P3N to quickly alert providers, health plans and/or Accountable Care organizations of their patients'/ members' admittance or treatment in another HIO.
- F. **Public Health Gateway (PHG).** Enables a secure, single point of entry for public health reporting which includes submission for Clinical Quality Measures Reporting and reporting to Public Health Registries. The PHG:
1. Acts as a single point of connectivity and message management and routing system;
 2. Allows information to come from Health Care Providers through their HIOs to a state connection governed by PA eHealth;
 3. Routes query responses through the state connection to the healthcare providers through their HIO; and
 4. Serves as a connection point through a web service that will route the report information to the correct destinations;
- G. **Certification and Governance.** HIOs participate in a Trust Community where they sign a multi-party Agreement, perform interoperability tests and certify they will exchange Data according to interoperability standards, privacy, and security policies.
- H. **Help Desk/Support Services.** The CP will handle initial problem solving and troubleshooting at the HIO level. For issues related to connection to or Use of the P3N, PA eHealth will provide support services 24 x 7 x 365. For issues related to connection to or use of the PHG, PA eHealth will provide support services from 6:00 a.m. – 6:00 p.m. on business days.
- I. **Service Level Agreements (SLAs).** SLAs exist between the PA eHealth and its technology vendors. These SLAs are designed to ensure the P3N and PHG Services are available to CPs, and cover areas such as network availability, response time, Data availability, Service restoration, continuous monitoring, help desk metrics, and maintenance windows.

11. PA eHEALTH'S RESPONSIBILITIES

- A. **Enabling of P3N Services.** PA eHealth shall provide the P3N Services as described in this Agreement Section 10 (*Services Provided by PA eHealth Through the P3N*), the P3N Policies, the P3N Application for Participation, the P3N Technical Requirements, and the HIO Fee Model and Schedule.
- B. **Compliance with Laws and Regulations.** PA eHealth shall comply with Applicable Laws and regulations.

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- C. **Privacy and Security of PHI.** Consistent with Applicable Laws and PA eHealth policies, PA eHealth shall implement safeguards to protect PHI from unlawful Use, access, modification, or disclosure.
- D. **Limitations on the Collection, Use and Disclosure of PHI.** PA eHealth will not itself affirmatively sell or Disclose PHI to any Third Party (except in relation to support of the P3N operations) for any activity not permitted by Applicable Law. PA eHealth will not be responsible for the Uses and Disclosures of PHI and other Data made by Authorized Users who permissibly access information from the P3N.
- E. **PA eHealth Contracts With Vendors.** Any contracts or agreements between PA eHealth and its technology vendor(s) will include contractor flow down provisions as applicable under HIPAA and Business Associate Agreements as appropriate. PA eHealth may provide the CP an opportunity to participate in the selection of core technology vendor(s).
- F. **Reports.** PA eHealth shall provide periodic reports to CPs regarding the operation of the P3N, as described in the P3N Policies.

12. CERTIFIED PARTICIPANT'S RESPONSIBILITIES, GENERALLY

- A. **Participation in P3N, PHG, and HIE Trust Community (HIETCC).** The CP shall participate in the P3N and PHG services (as defined in the Technical Requirements), and HIE Trust Community in accordance with the terms and conditions of this Agreement and the P3N Policies.
- B. **Compliance with Laws and Regulations.** The CP shall comply with all Applicable Laws and regulations.
- C. **Permitted Use of Protected Health Information.** The CP will access and use (or withhold) PHI only as permitted under this Agreement and in compliance with all Applicable Law (including, without limitation, HIPAA, as amended). The CP shall require that its Authorized Users only access the P3N for Permitted Purposes. The CP is responsible for the authentication and authorization of an Authorized User's access to the P3N. PA eHealth may request audit information (refer to Policy 6 Auditing Policy) from the CP, and the CP shall provide requested information, but in no case shall the CP be required to Disclose PHI to PA eHealth in violation of Applicable Law, policies or a Provider's Notice of Privacy Practices. At a minimum, CP shall respond to requests made for treatment purposes consistent with Applicable Law, and will respond to requests for payment and Health Care Operations requests, consistent with Applicable Law.
- D. **Limitations on the Collection, Use and Disclosure of PHI.** If CP intends to Disclose PHI to a Third Party for financial benefit unrelated to Treatment, Payment or Operations (TPO), it must secure patient consent. Patient authorizations for sale of PHI must specifically state that the CP is receiving payment in exchange for PHI and whether the PHI can be further exchanged for payment by the recipient. The CP may not sell or disclose PHI derived from the P3N, except as defined by HIPAA and HITECH. PHI shall be collected, Used and/or Disclosed only to the extent necessary to accomplish specific purposes, in accordance with federal and state law and this Agreement. CP shall be required to comply with federal and state laws governing the Use of PHI for research.

Notwithstanding these limitations, CP may retain, use and re-disclose PHI in accordance with Applicable Law, the terms of this Agreement, the terms of the CP-MO Agreement, and the CP's record retention policies and procedures. If the CP has agreed to more stringent terms with its MOs, those will take precedence.

- E. **Unauthorized Use.** CP shall have policies and procedures for addressing unauthorized Access and Use of the P3N, which must include review of audit logs, by the CP or its MOs. The CP shall notify PA eHealth of any unauthorized Access or Use in accordance with the requirements of this Agreement and applicable P3N Policies.
- F. **Prerequisite Systems.** The CP shall be solely responsible for obtaining, installing, and maintaining, at the CP's expense, the technology other than the Software provided by the P3N necessary for the CP to access and use the P3N, as are described in the P3N Technical Requirements (the "**Prerequisite System**"). PA eHealth is only responsible for the CP's inability to access or use the P3N if it is the result of a defect with the P3N.
- G. **Enterprise Security.** All Parties shall be responsible for maintaining a secure environment that supports the operation and continued development of the P3N. All Parties shall use appropriate safeguards to prevent inappropriate Use or Disclosure of PHI, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of that PHI. Appropriate safeguards shall be those identified in the HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and C. The CP shall, as appropriate under either the HIPAA Regulations, or under Applicable Law, have written privacy and security policies in place prior to the time that the CP first exchanges PHI through the P3N, other than for testing purposes. The CP shall also be required to comply with the P3N Policies and P3N Technical Requirements established by PA eHealth and the HIE Trust Community Committee that further define expectations for the CPs with respect to enterprise security.
- H. **Health Care Provider Messages Designated for Delivery To or Query From State Public Health Registries through the PHG or Other Registry Connection Agreement.** For messaging services established between Health Care Providers and the State's Public Health Registries (i.e., Immunization Registry, Cancer Registry, Electronic Lab Reporting, and others established by DOH and DHS) through the PHG– or as otherwise specifically agreed upon if not as part of the PHG, the CP will act solely as the pass-through agent for these messages, receiving these designated messages from the Health Care Provider and passing the message directly to the PHG, having used only the minimum amount of message data necessary to correctly route the Health Care Provider message to and from the PHG. As some of the PHG or otherwise agreed upon designated Health Care Provider messages may contain both PHI as well as confidential originating facility or individual personal end-user private systems access and authorization credentials (i.e., Username and/or password), the CP will not expose, take note of, or otherwise use, alter, manipulate, or redistribute the message contents in any way, so as to protect the message content integrity and confidentiality, as it is passed from the Health Care Provider through the CP to the PHG and on to the intended state Public Health Registry.
- I. **Malicious Software.** In participating in the P3N, the CPs shall employ security controls that meet applicable industry or regulatory standards to prevent the information and PHI being transmitted and any method of transmitting such information from introducing any virus, worm, unauthorized cookies, trojan, malicious Software, "malware," or other

program, routine, subroutine, or Data designed to disrupt the proper operation of a system or any part thereof (including the confidentiality, integrity, and availability of any Data) or any hardware or Software used by the P3N, 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 any part thereof or any hardware, Software or Data Used by a CP or the P3N in connection therewith, to be improperly accessed, destroyed, damaged, modified or made inoperable. In the absence of applicable industry standards, the CP shall use all commercially reasonable efforts to comply with the requirements of this Section.

- J. **Data within CP's Systems.** As between CP and PA eHealth, the CP shall be solely responsible for the control and security of all Data stored within the CP's systems, and for the CP's compliance with all laws and regulations applicable thereto.

13. CP's RESPONSIBILITIES AS A DATA PROVIDER

Without limiting any other provision of the CP's Participation Agreement, the terms and conditions of this Section 133 (*Data Provider's Responsibilities*) shall also apply.

- A. **Provision of PHI.** The CP shall provide access to PHI as described in this Agreement and the P3N Policies. The Uses authorized above include Use between multiple CPs in accordance with appropriate terms and conditions.
- B. **Quality of Information Provided.** The CP and PA eHealth shall have policies and procedures in place to prevent the PHI to which the CP provides Access pursuant to its participation in the P3N from being incorrect, inaccurate or incomplete.
- C. **Patient Matching.** The CP shall use best efforts based upon industry standards to prevent inaccurate patient matching. In doing so, the CP may enjoy flexibility in approach, but shall at a minimum perform in accordance with P3N Policies and industry standards in a professional and workmanlike manner. The CP shall notify PA eHealth through processes established by PA eHealth within the timeframes established by PA eHealth should it determine that there is an error or mismatch in PHI provided by the CP.
- D. **Reporting Inaccurate or Other Inappropriate Information.** The CP will provide the best quality Data it is able to produce to the P3N. In doing so, the CP may enjoy flexibility in approach, but shall at a minimum perform in accordance with industry standards in a professional and workmanlike manner. The CP shall notify PA eHealth of any PHI to which the CP has provided Access as described in Section 13.A (*Provision of PHI*) that the CP later determines is corrupt, incomplete, erroneous or otherwise incorrect, or which is otherwise inappropriate for availability through the P3N.
- E. **Specifically Prohibited Activities.** Without limiting any other provision of this Agreement, the CP shall not knowingly or negligently: (1) allow to be transmitted to the P3N any unlawful, threatening, abusive, libelous, defamatory, or otherwise objectionable information of any kind; (2) allow to be transmitted to the P3N any information or Software that contains any virus, worm, unauthorized cookies, trojan, malicious Software, "malware," or other program, routine, subroutine, or Data designed to disrupt the proper operation of a system or any part thereof or any hardware or Software used by the P3N; or (3) allow to be transmitted to the P3N any information that violates the proprietary rights, privacy rights, or any other rights of a Third Party, including any patient. In doing so, the

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CP may enjoy flexibility in approach, but shall at a minimum perform in accordance with P3N Policies and industry standards in a professional and workmanlike manner.

- F. **Data Provider's Representation as to Protected Health Information.** By making PHI available to Authorized Users through the P3N, the CP represents that it (1) is compliant with Applicable Laws in making the PHI available to Authorized Users for the purposes of Treatment, Payment and Operations, such that the Use of the PHI by other Parties does not violate any intellectual property rights, privacy rights, or other rights of a patient or other Third Party and (2) is an accurate representation of the Data contained in its systems, and does not contain known material errors at the time it is provided.
- G. **Notice to Patients.** The CP shall notify (or request the contributing entity notify) affected individuals of the CP's participation in the P3N, and such individuals' rights with respect thereto, to the extent required by Applicable Laws and regulations, including the HIPAA Rules.
- H. **Standards of Performance.** Nothing in Section 12 (*Certified Participant's Responsibilities, Generally*), or this Section 13 (*CP's Data Provider Responsibilities*), is intended to or shall supersede or replace any other standard of performance required of a CP by virtue of any portion of this Agreement or Applicable Law. Further, the CP acknowledges by execution of this Agreement that the quality and reliability of Data in the P3N is of the utmost importance to the value, reliability, and sustainability of the P3N, and that the compliance with, and good faith performance of, its obligations under this Section 13 (*Data Provider's Responsibilities*) is a material part of this Agreement.

14. CONFIDENTIAL INFORMATION AND PROTECTED HEALTH INFORMATION

- A. **PHI.** The privacy and security of PHI is governed under both federal and state laws and shall be deemed to be Confidential Information hereunder.
- B. **Obligations.** Each party acknowledges that it (the "**Receiving Party**") shall be provided with and exposed to information, materials, and Data that are confidential and proprietary to the other party (the "**Disclosing Party**"), including Documentation, confidential business information of the Disclosing Party, lists, and identities, password(s), or other identification or authentication devices ("**Confidential Information**").
1. The Receiving Party will hold Confidential Information it obtains in the strictest confidence and will use and permit use of Confidential Information solely for the purposes of this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of Confidential Information as the Receiving Party employs with respect to its own Confidential Information of like importance.
 2. The Receiving Party may disclose or provide Access to its workforce members, agents, and consultants who have a need-to-know and may make copies of Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder. The Receiving Party currently has, and in the future will maintain in effect and enforce, rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement, including written instruction to or agreements with workforce

members, agents, or consultants who are bound by an obligation of confidentiality no less restrictive than set forth in this Agreement.

3. The Receiving Party will: require its workforce members, agents, and consultants not to disclose Confidential Information to third parties without the Disclosing Party's prior written consent; will notify the Disclosing Party immediately of any unauthorized disclosure or use; and will cooperate with the Disclosing Party to protect all confidentiality and proprietary rights in and ownership of Confidential Information. The Receiving Party shall return all Confidential Information to the Disclosing Party, or destroy such information if return is not practical, retaining no copies, upon the termination of the CP's Agreement.
4. Confidential Information will not include any information or material, or any element thereof, whether or not such information or material is Confidential Information for the purposes of this Agreement, to the extent any such information or material, or any element thereof:
 - a) has previously become or is generally known, unless it has become generally known through a breach of this Agreement or a similar confidentiality or non-disclosure agreement, obligation, or duty;
 - b) was already rightfully known to the Receiving Party prior to being disclosed by or obtained from the Disclosing Party as evidenced by written records kept in the ordinary course of business or by proof of actual use by the Receiving Party;
 - c) has been or is rightfully received by the Receiving Party from a Third Party (other than the Disclosing Party) without restriction or disclosure and without breach of a duty of confidentiality to the Disclosing Party; or
 - d) has been independently developed by the Receiving Party without access to Confidential Information of the Disclosing Party.

It will be presumed that any Confidential Information in a Receiving Party's possession is not within exceptions a), b) or c) above, and the burden will be upon the Receiving Party to prove otherwise by records and documentation.

- C. **Compelled Disclosures.** To the extent required by Applicable Law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the Receiving Party, the Receiving Party may Disclose Confidential Information or PHI in accordance with such law or order or requirement, subject to the following conditions: as soon as possible after becoming aware of such law, order or requirement and prior to Disclosing Confidential Information or PHI, the Receiving Party will so notify the Disclosing Party in writing and, unless prohibited by law, the Receiving Party will provide the Disclosing Party notice not less than five (5) business days prior to the required Disclosure. The Receiving Party will use reasonable efforts not to release Confidential Information or PHI pending the outcome of any measures taken by the Disclosing Party to contest, otherwise oppose or seek to limit such Disclosure by the Receiving Party and any subsequent Disclosure or use of Confidential Information or PHI that may result from such Disclosure. Notwithstanding any such compelled Disclosure by the Receiving Party, such compelled Disclosure will not otherwise affect the Receiving Party's obligations hereunder with respect to Confidential Information or PHI so Disclosed.

15. SUBCONTRACTS

The Parties may subcontract any portion of the Services described in this Agreement to third parties selected by respective Parties. The existence of any subcontract shall not change the obligations of PA eHealth or the CP under this Agreement.

By signing this Agreement, the CP certifies that the CP's subcontractors and agents, their Affiliates, subsidiaries, officers, directors, and employees are not currently under suspension or debarment and are not precluded from participation in the federally funded health care programs by the Commonwealth, any other state or the federal government.

All parties to this Agreement shall inform PA eHealth, and PA eHealth shall inform all other parties, if, at any time during the term of this Agreement, it or its subcontractors, agents, their Affiliates, subsidiaries, officers, directors or employees is suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity.

Such notification shall be made within 15 Days of the date of discovery of the action or circumstance.

16. DISCLAIMERS

- A. NOTHING HEREIN, OR IN ANY PORTION OF THIS AGREEMENT, LIMITS OR MAY BE CONSTRUED TO LIMIT THE SOVEREIGN IMMUNITY OF PA EHEALTH.
- B. **Limitation of Liability.** EXCEPT AS PREVIOUSLY PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL ANY PARTY, ITS AFFILIATED ENTITIES, OR ITS OR THEIR DIRECTORS, OFFICERS, WORKFORCE MEMBERS, AGENTS, OR INSURERS BE LIABLE TO THE OTHER PARTIES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR ANY OTHER THIRD PARTY, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS, DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT, THE USE OF THE P3N OR ANY COMPONENT THEREOF, OR ANY PATIENT INFORMATION. NO PARTY SHALL BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (1) THE ACCURACY OR COMPLETENESS OR INPUTTING OF PHI; OR (2) THE ACTS OR OMISSIONS OF THE OTHER PARTY, WHETHER SUFFERED BY THE OTHER PARTY OR ANY THIRD PARTY. EXCEPT WHERE OTHER LEGAL LIMITS APPLY, A PARTY'S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES, EXCLUDING FINES OR PENALTIES ASSESSED BY STATE OR FEDERAL REGULATORY BODIES, ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THREE MILLION DOLLARS [\$3,000,000.00]. THE EXISTENCE OF ONE OR MORE CLAIMS SHALL NOT ENLARGE THESE LIMITS. EACH PARTY ACKNOWLEDGES THAT THE ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION WILL APPLY REGARDLESS OF WHETHER ANY LIMITED OR EXCLUSIVE REMEDY SPECIFIED IN THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

- C. **Disclaimer of Responsibility.** PA eHealth accepts no responsibility for (1) the performance of the prerequisite systems or any other systems of the CP, (2) the transmission of the PHI to or from the P3N, (3) any use of the P3N by any Authorized User or its workforce members or other agents, (4) the accuracy, completeness or appropriateness of PHI and any health care decision made in reliance, either in whole or in part, thereon; and (5) all use by any Authorized User of information obtained through the P3N including, without limitation, PHI. The recipient of the information (which may include the CP, MO, its workforce members, contractors and other agents) shall be solely responsible for all decisions involving patient care, utilization management and quality management for its patients. THE P3N SHOULD BE USED AS A SUPPLEMENT TO, AND NOT IN PLACE OF, OTHER DATA THAT IS AVAILABLE TO THE AUTHORIZED USER AND/OR THE TREATING HEALTH CARE PROVIDER. No Authorized User shall have recourse against PA eHealth for any loss, damage, claim, or cost relating to or resulting from the Use or misuse of the P3N by the CP or Data Accessed through the P3N by the CP's Authorized Users.

The restrictions and requirements of this Section shall be made applicable to the CP's MOs and Authorized Users.

17. FORCE MAJEURE

If either party cannot perform any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other disruptive natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) terrorist attacks; (g) acts of legislative, judicial, executive, or administrative authorities; or (h) any other circumstances that are not within its reasonable control could not be avoided through the exercise of commercially reasonable care and diligence (a "Force Majeure Event"), then the non-performing party will: (a) immediately notify the other party; (b) take reasonable steps to resume performance as soon as possible; and (c) not be considered in breach during the duration of the Force Majeure Event. Notwithstanding the foregoing, a Force Majeure Event will not relieve the party of its obligations under Section 14 (*Confidential Information and PHI*) or its obligations to protect the confidentiality, privacy, and security of PHI.

18. DISPUTE RESOLUTION

- A. **Informal Dispute Resolution.** The Parties agree that all disputes arising under this Agreement be resolved expeditiously, and at the level within each party's organization that is most knowledgeable about the disputed issue. Such disputes may be, although are not limited to, things such as disagreements with regard to the existence or significance of a Breach, causal liability for the Breach or the responsibility to address, resolve or report such a Breach. Because these disputes can involve time sensitive matters, an expedited approach to resolution is desirable for the prompt and private resolution of these issues.
- B. **Mediation.** If a dispute cannot be resolved informally as provided in Section 18.A (*Informal Dispute Resolution*), the dispute may be resolved by mediation conducted in accordance with the OGC Mediation Handbook (<http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation/Pages/default.aspx>). Any negotiation or mediation conducted pursuant to this Section will take place in Dauphin County, Pennsylvania. Nothing in this Section prevents the Parties from exercising their

right to terminate this Agreement in accordance with Section 8 (*Suspension and Termination of Agreements*).

- C. **Immediate Relief.** Notwithstanding the prior Section, a CP may be relieved of its obligation to participate in the Dispute Resolution Process if such CP (1) believes that another CP's acts or omissions create an immediate threat to the confidentiality, privacy or security of health Data exchanged through the P3N or PHG or will cause irreparable harm to the P3N, PHG, or another CP and (2) pursues immediate injunctive relief against such other CP in a court of competent jurisdiction. The CP pursuing immediate injunctive relief must notify PA eHealth 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 same. If the injunctive relief sought is not granted and the CP seeking such relief chooses to pursue the dispute, the CPs 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 CP and voluntarily suspends its participation in the P3N in accordance with Section 8 (*Suspension and Termination of Agreements*), or is suspended in accordance with this Agreement.
- 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. **Reservation of Rights.** If, following the Dispute Resolution Process, in the opinion of any involved Party, the mandatory Dispute Resolution Process failed to adequately resolve the dispute, the Parties may pursue any remedies available to it.

19. LICENSE

- A. PA eHealth hereby authorizes and grants to the CP a royalty-free, limited (as described herein), non-exclusive, non-transferable license to access and to use PA eHealth Software comprising the CP's subscription including the PHG, as reflected in Section 9 P3N Services Subscription and Payment, above, during the term. This license allows access to PA eHealth Software for the purposes set forth in this Agreement, including allowing compliant use by MOs, except that the CP and its MOs and Authorized Users may not decompile or reverse engineer, or attempt to decompile or reverse engineer, any of PA eHealth Software.

To the extent that CP uses PA eHealth Software, CP will take commercially reasonable measures to protect the confidentiality of the Software and maintain the Software with the strictest confidence. All rights, not expressly granted here to CP on a nonexclusive basis are reserved by PA eHealth or its licensors.

Upon the expiration or termination of this Agreement, all rights granted to CP and by CP shall immediately cease. CP shall, at no cost to PA eHealth and as applicable, deliver to PA eHealth all of PA eHealth Software in its possession in the form in use as of the Effective Date of such expiration or termination (including any related source code then in CP's possession or under its control, and related source code in the possession or under the

control of the CP's MOs and Authorized Users). Within fifteen (15) calendar Days after termination or expiration, CP shall destroy or erase all other copies of any of PA eHealth Software then in CP's possession or under its control, unless otherwise instructed by PA eHealth, in writing. Consistent with the provisions of this Section, CP shall refrain from manufacturing, copying, marketing, distributing, or use of any PA eHealth Software, including copies of PA eHealth Software incorporated into other works. The obligations of this Provision shall survive any termination of this Agreement.

CP acknowledges PA eHealth's exclusive right, title and interest, including without limitation copyright and trademark rights, in and to PA eHealth Software, and shall not in any way, at any time, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title, and interest, and shall not use or disclose PA eHealth Software without PA eHealth's written consent, which consent may be withheld by PA eHealth for any reason. Further, CP shall not in any manner represent that CP has any ownership interest in PA eHealth Software. This provision is a material part of this Section.

The CP shall protect access to PA eHealth Software by use of commercially reasonable policies and procedures designed to protect the privacy of identification information and provide appropriate limitations upon dissemination of permissions and physical access.

The restrictions and requirements of this Section shall be made applicable to the CP's MOs and Authorized Users by agreement with the CP.

- B. The CP shall not, and shall not permit its MOs and Authorized Users to:
1. Permit any person other than Authorized Users to use PA eHealth Software and Documentation;
 2. Use the Software directly or indirectly on a time-sharing, remote job entry, or service bureau basis or otherwise for the benefit of any Third Party (other than, where applicable, MOs);
 3. Use, copy, adapt, modify, translate, reverse engineer, decompile, disassemble, sublicense, sell or distribute the Software or Documentation otherwise than to the extent that they are expressly licensed to do so under the Contract or otherwise as expressly permitted by Applicable Law where such rights cannot be modified by agreement;
 4. Create subsets or derivative works of or from PA eHealth Software, unless otherwise explicitly permissible under the terms of this Agreement;
 5. Disclose the Login Details to any Third Party or allow Third Parties to use the Login Details to access PA eHealth Software (whether on the Authorized User's behalf or otherwise);
 6. Create a denial of service, hack into, make unauthorized modifications of or otherwise impede PA eHealth Software, whether by the use of malware or otherwise, intercept the communications of others using PA eHealth Software or falsify the origin of the Client's or the Authorized User's (as applicable) communications or attempt to do any of the foregoing; or
 7. Use PA eHealth Software for any illegal purpose.

20. INSURANCE

- A. The CP shall procure and maintain at its expense, or cause to be maintained by any agents, contractors and subcontractors, as appropriate, the following types of insurance or maintain such self-insurance plans as shall be sufficient to insure against any claims, covering CP, its employees, agents, contractors and subcontractors:
1. Worker's Compensation Insurance for all of the CP's employees and those of any subcontractor engaged in performing in relation to this Agreement, in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*)
 2. Commercial general liability insurance (including contractual liability to cover the indemnity provisions set forth in this Agreement), providing coverage from claims for damages for personal injury, death, and property of others. The limits of such insurance shall be in an amount not less than \$500,000 per person, \$1,000,000 per occurrence, bodily injury and property damage combined, and \$2,000,000 annual aggregate (including personal and advertising injury). PA eHealth and the Commonwealth of Pennsylvania shall be named as insurance certificate holders, as their interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by PA eHealth as an insurance certificate holder, or any other CP, against the insurance coverages in regard to the Agreement obligations.
 3. Professional Liability Insurance in the amount of five million dollars (\$5,000,000), per occurrence/annual aggregate.
 4. Cyber and Technology Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of five million dollars (\$5,000,000), per occurrence and annual aggregate, including coverage for (a) notification, credit monitoring and ID theft restoration; and (b) loss and defense coverage for claims brought for privacy violation and claims alleging security failure.
 5. Umbrella Liability Insurance, with a minimum limit of five million dollars (\$5,000,000) in excess of the Workers Compensation, Employers Liability insurance, and General Liability.
 6. Errors/Omissions Liability Insurance in an amount of not less than five million dollars (\$5,000,000) aggregate.
- B. Prior to commencing performance under this Agreement, the CP shall provide PA eHealth with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this paragraph until at least thirty (30) Days prior written notice has been given to PA eHealth (unless the CP's policy has been cancelled, in which case ten (10) Days prior written notice to PA eHealth is permissible).

- C. The CP will maintain such insurance for the life of this Agreement. If any policy of insurance is issued on a “claims made” basis, then upon termination of any such policy, the CP shall procure extended reporting (“tail” coverage) for such policy for the longest extended reporting period that is commercially available. This provision shall survive termination of this Agreement.
- D. Upon notice to and approval by PA eHealth, CP’s self-insurance of the types and amounts of insurance set forth above shall satisfy the requirements of this Section 20 (*Insurance*), provided PA eHealth may request from CP evidence each year during the term of the Agreement that CP has sufficient assets to cover such losses.
- E. The CP may procure and maintain at its expense, or cause to be maintained by any agents, contractors and subcontractors, as appropriate, insurance which is substantively similar to the coverages offered by insurance of the types and amounts set forth above (except that limit amounts set forth above are minimum amounts for the risks insured against). Self-insurance plans shall be sufficient as permitted in subsection (A), above. The CP must provide its explanation, including substantiating Documentation, for inspection at a maximum of once per year upon PA eHealth’s request.

21. LIABILITY

- A. As between the CP and the PA eHealth, the CP assumes all risk and liability, and indemnifies PA eHealth against, any Third Party claims, demands and actions based upon or arising out of any activities performed, or omissions, by the CP and its employees, contractors, subcontractors, agents, and its MOs under this Agreement, including, without limitation to, privacy or security Breaches, exchange of Super Protected Data, and failures to comply with the requirements of this Agreement.

The CP shall take reasonable steps and implement agreements, policies and procedures governing use, consistent with this Agreement, by any Parties who access or use the P3N or PHI through the CP’s Systems, including the CP’s Authorized Users, workforce members, contractors, subcontractors, agents and MOs.

- B. PA eHealth does not have the authority to and shall not indemnify any entity. PA eHealth is responsible for any loss, liability or expense, which arises out of or relates to PA eHealth’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of PA eHealth is established by a court of law or where settlement has been agreed to by PA eHealth. This provision shall not be construed to limit PA eHealth’s rights, claims or defenses that arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of PA eHealth.

22. OWNERSHIP RIGHTS

- A. Ownership of Properties

All Software or tools owned by PA eHealth or its licensors (“PA eHealth Software”) as of the Effective Date, shall be and shall remain the exclusive property of PA eHealth or its licensors, and CP shall acquire no rights or interests in PA eHealth Software or that of its licensors by virtue of this Agreement except as described in this Section or in another

provision set forth in this Agreement. The CP shall not use any PA eHealth Software for any purpose other than for completion of work to be performed under this Agreement. In the use of PA eHealth Software, CP will be bound by the confidentiality provisions of this Agreement. PA eHealth represents and warrants that it has all rights to the PA eHealth Software provided for use by the CP and its MOs pursuant to this Agreement.

- B. PA eHealth shall have unrestricted authorization to reproduce, distribute, and use, in accordance with HIPAA and all other Applicable Law, any submitted report, Data, or material, and any Software or modifications and any associated Documentation that is designed or developed and delivered to PA eHealth as part of the performance of this Agreement. This authorization does not apply to the content of transactions passing through PA eHealth Software, though PA eHealth retains the aforementioned authorizations as to the metadata necessary to produce audit reports regarding the use of PA eHealth Software.

23. PUBLICATION RIGHTS AND/OR COPYRIGHTS

- A. The CPs shall not publish any of the results of work related to this Agreement without the prior written permission of PA eHealth. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author." The CP shall not include in the Documentation any copyrighted matter, unless the CP provides PA eHealth with written permission of the copyright owner.
- B. Rights and obligations of the Parties under this Section survive the termination of this Agreement.

24. OFFICIALS NOT TO BENEFIT

No official or employee of PA eHealth and no member of its General Assembly who exercises any functions or responsibilities under this Agreement shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership, or association in which they are, directly or indirectly, interested; nor shall any such official or employee of PA eHealth or member of its General Assembly have any interest, direct or indirect, in this Agreement or the proceeds thereof.

25. COMPLIANCE WITH LAWS

The Parties shall comply with all federal, state, and local laws applicable to it, including, but not limited to, all statutes, regulations and rules that are in effect as of the Effective Date of this Agreement and shall procure at their expense all licenses and all permits necessary for the fulfillment of obligations hereunder.

26. EXAMINATION OF RECORDS

- A. The CP will maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges and payment under this Agreement to the extent and in such detail as will properly reflect all payments made under the provisions of this Agreement.
- B. The CP will make available at the office of the CP at all reasonable times, and upon reasonable written notice, during the term of this Agreement and the minimum period set

forth in subsection (c) below, any of the records for inspection, audit, or reproduction by DHS. To the extent allowed by law, the CP will maintain any documents so provided in accordance with the confidentiality requirements of this Agreement.

- C. The CP shall preserve and make available its records for a period of five (5) years from the date of final payment under this Agreement, or a longer period if required by Applicable Law:
 - 1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement.
 - 2. Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or charges or payments under this Agreement as to which exception has been taken by the auditors, shall be retained by the CP until such litigation, claims, or exceptions have been finally resolved.
- D. Except for documentary evidence retained pursuant to Section (C)(2) above, the CP may in fulfillment of its obligation to retain its records as required by this Section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two (2) years following the last day of the month of payment by the CP of the invoice or voucher to which such records relate, unless a shorter period is authorized by PA eHealth with the concurrence of its auditors.
- E. The provisions of this Section shall be applicable to and included in each CP subcontract and CP-MO Agreement. The term “subcontract” as used in this Agreement only, excludes purchase orders not exceeding \$1,000 and subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

27. SINGLE AUDIT ACT OF 1984

In compliance with the *Single Audit Act of 1984*, the CP agrees to the following:

- A. This Agreement is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in *Government Auditing Standards*, 1994 Revisions (Yellow Book).
- B. The audit requirement of this Agreement will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, 31 U.S.C. § 7501, *et seq.*, and all rules and regulations promulgated pursuant to the Act.
- C. PA eHealth may have federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- D. The CP further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984*.

28. RIGHT-TO-KNOW LAW

- A. If PA eHealth needs the CP's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the CP using the legal contact information provided in this Agreement. The CP, at any time, may designate a different contact for such purpose upon reasonable prior written notice to PA eHealth.
- B. Upon written notification from PA eHealth that it requires the CP's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the CP's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the CP shall:
 - 1. Provide PA eHealth, within ten (10) calendar Days after receipt of written notification, access to, and copies of, any document or information in the CP's possession arising out of this Agreement that PA eHealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2. Provide such other assistance as PA eHealth may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- C. If the CP considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the CP considers exempt from production under the RTKL, the CP must notify PA eHealth and provide, within seven (7) calendar Days of receiving the written notification, a written statement signed by a representative of the CP explaining why the requested material is exempt from public disclosure under the RTKL.
- D. PA eHealth will rely upon the written statement from the CP in denying a RTKL request for the Requested Information unless PA eHealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should PA eHealth determine that the Requested Information is clearly not exempt from disclosure, the CP shall provide the Requested Information within five (5) business days of receipt of written notification of PA eHealth's determination.
- E. If the CP fails to provide the Requested Information within the time period required by these provisions, the CP shall indemnify and hold PA eHealth harmless for any damages, penalties, costs, detriment or harm that PA eHealth may incur as a result of the CP's failure, including any statutory damages assessed against PA eHealth.
- F. PA eHealth will reimburse the CP for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- G. The CP may file a legal challenge to any PA eHealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts. The CP shall indemnify PA eHealth for any legal expenses incurred by PA eHealth as a result of such a challenge and shall hold PA eHealth harmless for any damages, penalties, costs, detriment or harm that PA eHealth may incur as a result of the CP's failure, including any statutory damages assessed against PA eHealth, where the outcome of such legal challenge shows the record to be "public" (as defined under the RTKL). As between the Parties, the CP

agrees to waive all rights or remedies that may be available to it as a result of PA eHealth's disclosure of Requested Information pursuant to the RTKL.

- H. The CP's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the CP has Requested Information in its possession.

29. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The CP agrees:

- A.** In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this Agreement or any subcontract, the CP, each subcontractor, or any person acting on behalf of the CP or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- B.** Neither the CP nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this Agreement.
- C.** The CP and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- D.** The CP and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which this Agreement relates.
- E.** The CP and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The CP and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The CP and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small

Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

- F.** The CP shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- G.** The CP's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of this Agreement through the termination date thereof. Accordingly, the CP and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of this Agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- H.** The Commonwealth may cancel or terminate this Agreement and all money due or to become due under this Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause for cause pursuant to and in accordance with the termination provisions set forth herein. In addition, the agency may proceed with debarment or suspension and may place the CP in the Contractor Responsibility File.

30. CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

- 1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - c. "Contractor" means the CP that has entered into this Agreement with the Commonwealth.
 - d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
 - e. "Financial Interest" means either: (1) Ownership of more than a five percent interest in any business; or (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

- f. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- g. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
2. In furtherance of this policy, Contractor agrees to the following:
- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions or occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor.

Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

31. CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the BOP-1204 PAGE 17 of 25 Revised: 02/06/2018 Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- A. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- B. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a

timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

- C. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- D. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- E. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- E. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

32. AMERICANS WITH DISABILITIES ACT

- A. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the CP understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. As a condition of accepting this Agreement, the CP agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. The CP shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands,

suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the CP's failure to comply with the provisions of subparagraph A above.

33. GENERAL TERMS

- A. **Assignment.** If a Party wishes to assign or otherwise transfer this Agreement to anyone, such Party must obtain the other Party's prior written consent, which shall not be unreasonably withheld. Any attempted transfer or assignment in violation of the foregoing shall be void and of no effect. Each Agreement shall be binding on the Parties, their successors, and permitted assigns. For any breach or threatened breach of obligations identified hereunder as subjecting a non-breaching Party to irreparable harm, the non-breaching Party shall be entitled to seek equitable relief in addition to its other available legal remedies in a court of competent jurisdiction.
- B. **Governing Law.** This Agreement, including all referenced documents, shall be governed by and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to any conflict of law provision and the decisions of the Pennsylvania courts. The CP consents to jurisdiction of any court of the Commonwealth of Pennsylvania and any federal court in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The CP agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
- C. **Validity of Provisions.** In the event that a court of competent jurisdiction shall hold any terms and conditions, or any part or portion of any terms and conditions of this Agreement, invalid, void or otherwise unenforceable, each and every remaining terms and conditions or part or portion thereof shall remain in full force and effect.
- D. **Waiver.** If any provision of an Agreement is found invalid or unenforceable by an arbitrator or a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. All waivers hereunder must be made in writing by a duly authorized representative of the Party against whom the waiver is to operate, and failure at any time to require the other Party's performance of any obligation under an Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver, in whole or in part, of any provision of this Agreement will not be considered to be a waiver of any other provision.
- E. **Counterparts.** An Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same Agreement.
- F. **Third-Party Beneficiaries.** Except as expressly provided with respect to other CPs, there shall be no Third-Party beneficiaries of this Agreement.
- G. **Relationship of HIETCC.** The relationship of the Parties to each Agreement is one of independent contractors and shall not be deemed to be that of employer and workforce member, master and servant, principal and agent or any other relationship except that of independent contractors contracting for the purposes of that Agreement. The CPs are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the Parties. Neither the HIETCC

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nor any CP shall have any authority to bind or make commitments on behalf of any other CP for any purpose, nor shall any such Party hold itself out as having such authority.

34. NOTICES

Any written notice to any Party under this Agreement shall be sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission, provided such delivery is confirmed, or by recognized overnight carrier service, with confirmed receipt, or by certified or registered United States mail, postage prepaid, when receipt requested sent to the address set forth below, or to such other address as a Party may designate in writing by giving notice as provided in this section.

If to PA eHealth:

Pennsylvania eHealth Partnership Program

Attn:

Address:

City, Pennsylvania, Zip

Fax: (xxx) xxx-xxxx

Email:

With a Copy to:

Chief Counsel, DHS

Third Floor West Health & Welfare Building

625 Forster Street

Harrisburg, PA 17120

If to the Certified Participant:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by its duly authorized officials.

Certified Participant:

Signature Date

Printed Name

Title

Organization's FEIN

Organization's SAP Vendor Number

As a corporate entity, please have either the president or vice president and either the secretary/assistant secretary or treasurer/assistant treasurer of the corporation sign. If any other person has authority to execute contracts, that person may sign, but a copy of the document or documents conferring that authority (such as by-laws or corporate resolution) must be sent with this Agreement when returning it to PA eHealth.

Secretary/Designee

[appropriate PA eHealth signatory] Date

Approved For Form and Legality:

DHS Office of General Counsel Date

Office of General Counsel Date

Office of Attorney General Date

CLAC 4459773.1

Office of Comptroller Date

APPENDIX A
BUSINESS ASSOCIATE AGREEMENT

The Parties intend to protect the privacy and provide for the security of PHI Disclosed to Business Associate in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health (HITECH) Act and as amended by the Omnibus Final Rule, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Part 164,), as amended, 35 P.S. § 7607, 50 Pa.C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, 42 C.F.R. §§ 431.301-431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, the Pennsylvania Breach of Personal Information Notification Act, 73 P.S. § 2301 et seq., and other relevant laws.

1. OBLIGATIONS OF BUSINESS ASSOCIATE

- A. **Permitted Uses and Disclosures of Protected Health Information.** Business Associate shall not Use or Disclose PHI other than as permitted or required by the Underlying Agreement, this BAA, or as permitted or Required by Law. Further, Business Associate shall not Use PHI in any manner that would constitute a violation of the HIPAA Privacy Rule, the HITECH Act, or the Omnibus Final Rule, if so Used by Covered Entity. Except Business Associate may Use or Disclose PHI (1) for the proper management and administration of Business Associate, (2) to carry out the legal responsibilities of Business Associate, or (3) for Data Aggregation purposes for the Health Care Operations of Covered Entity consistent with HIPAA requirements. In order to Disclose PHI for its proper management and administration, such Disclosures are to be Required by Law, or the Business Associate is to obtain reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- B. **Prohibited Uses and Disclosures under HITECH.** Notwithstanding any other provision in this BAA, Business Associate shall comply with the following requirements; (1) Business Associate shall not Use or Disclose PHI for fundraising or marketing purposes, except as provided under the Underlying Agreement and consistent with the requirements of 45 CFR Part 164; (2) Business Associate shall not Disclose PHI to a health plan for payment or Health Care Operations purposes if Covered Entity has informed Business Associate that the patient has requested this additional restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, 45 CFR Part 164; (3) Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 45 CFR Part 164; however this prohibition shall not affect payment by Covered Entity to Business Associate for the provision of Services pursuant to the Underlying Agreement. Business Associate shall not Use or Disclose PHI for any other purpose.

- C. **Adequate Safeguards for PHI.** Business Associate warrants that it shall comply with all applicable provisions of HIPAA and HITECH, and to implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this BAA, as required by the Security Rule. Business Associate further warrants that it shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI.
- Appropriate safeguards shall include implementing administrative safeguards required by 45 CFR § 164.308, physical safeguards as required by 45 CFR § 164.310, technical safeguards as required by 45 CFR § 164.312. Business Associate shall also comply with annual guidance on the most effective and appropriate technical safeguards issued by the Secretary of Health and Human Services under its authority granted by HITECH at 42 USCS § 17931(c).
- D. **Subcontractors And Agents.** Business Associate agrees that any time PHI is provided or made available to any subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and shall first enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the Use and Disclosure of PHI as contained in this Agreement, and as further imposed by the HITECH Omnibus final rule of 1/2013.
- E. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.
- F. **Reporting Non-Permitted Use or Disclosure.** Business Associate shall report to Covered Entity in writing each Use or Disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors that is not specifically permitted by this BAA, of which Business Associate becomes aware, as well as each Security Incident, as defined in the Security Rule, of which Business Associate becomes aware and any Breaches of PHI as defined by federal and state laws of which Business Associate becomes aware. An initial report shall be made within five (5) business days from the time the Business Associate becomes aware of the non-permitted Use or Disclosure or Security Incident, followed by a written report, including risk assessment, to Covered Entity no later than fifteen (15) business days from the date the Business Associate becomes aware of the non-permitted Use or Disclosure or Security Incident.
- G. **Availability of Internal Practices, Books and Records to Government.** Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity available to the Secretary, for purposes of determining Covered Entity's compliance with HIPAA.
- H. **Access to Protected Health Information.** To the extent Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its agents or subcontractors in Designated Record Sets) available to Covered Entity for inspection and copying within five (5) Days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. 164.524. If Business Associate

maintains an Electronic Designated Record Set, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under HIPAA, HITECH, and the Omnibus final rule, including, but not limited to 45 CFR Section 164. Business Associate may charge a reasonable cost-based fee in responding to a request to Access PHI and a cost-based fee for the production of both Electronic and non-Electronic Media copies, as permitted by 45 CFR Section 164. Business Associate shall notify Covered Entity within five (5) Days of receipt of a request for Access to PHI.

- I. **Amendment of Designated Record Set.** To the extent Business Associate maintains a Designated Record Set on behalf of Covered Entity, within fifteen (15) Days of receipt of a request from Covered Entity or an individual for an amendment of PHI or a record about an individual contained in a Designated Record Set, Business Associate (or its agents or subcontractors) shall make any amendments that Covered Entity directs or agrees to in accordance with the Privacy Rule. Business Associate may charge a reasonable fee based on its labor costs in responding to a request to amend PHI. Business Associate shall notify Covered Entity within five (5) Days of receipt of a request for amendment to PHI.
- J. **Accounting of Disclosures.** Within thirty (30) Days of notice by Covered Entity of a request for an accounting of Disclosures of PHI, Business Associate and its agents or contractors shall make available to Covered Entity the information required to provide an accounting of Disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. § 164.528, as determined by Covered Entity. The provisions of this subparagraph 1.J shall survive the termination of this BAA. The accounting must be provided without cost to the individual or requesting party if it is the first accounting requested by such individual within any twelve (12)-month period. For subsequent accountings within a 12-month period, Business Associate may charge the individual or party requesting the accounting a reasonable fee based upon Business Associate's labor costs in responding to the request and a cost-based fee for the production of non-electric media copies, so long as Business Associate informs the individual or requesting party in advance of the fee and the individual or requesting party is afforded an opportunity to withdraw or modify the request. Business Associate shall notify Covered Entity within fifteen (15) Days of receipt of any request by an individual or other requesting party for an accounting of Disclosures.
- K. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, Use and Disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure. Business Associate understands and agrees that the definition of "minimum necessary" is subject to further guidance and shall keep itself informed of guidance issued by the Secretary of DHHS with respect to what constitutes "minimum necessary."
- L. **Sanction Procedures.** Business Associate agrees that it shall develop, implement and enforce a system of sanctions for any employee, subcontractor or agent who violates this Agreement, Applicable Laws or agency guidance.
- M. **Grounds For Breach.** Non-compliance by Business Associate with this Agreement or the Privacy or Security Rules, as amended, is a breach of this Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

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- N. **Reporting Violations of Law.** Business Associate may Use PHI to report violations of law to the appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).
- O. **Privacy Rule Obligations.** To the extent that Business Associate is to carry out one or more of the Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s), as required by HIPAA Section 164.

2. OBLIGATIONS OF COVERED ENTITY

- A. **Privacy Notice, Permissions, Restrictions.** Covered Entity shall notify Business Associate of: (1) any limitation(s) in Covered Entity's notice of privacy practices to the extent such limitation(s) may affect Business Associate's Use or Disclosure of PHI; (2) any changes in, or revocation of an individual's authorization for Covered Entity to Use or Disclose PHI to the extent that such changes may affect Business Associate's Access to or Use or Disclosure of PHI; (3) any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to (including, without limitation, any agreement by Covered Entity not to Disclose PHI to a health plan for payment or Health Care Operations purposes) to the extent that such restriction may affect Business Associate's Access to or Use or Disclosure of PHI; and (4) any amendments required to be made to PHI that Business Associate possesses in a Designated Record Set.

3. TERM AND TERMINATION

- A. **Term.** Subject to the provisions of Section 3.B, the term of this BAA shall be the term of the Underlying Agreement(s), or if there is no Underlying Agreement, the term shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
- B. **Termination for Cause.** In addition to and notwithstanding the termination provisions set forth in the Underlying Agreement, upon Covered Entity's knowledge of a material breach of this BAA by the Business Associate, Covered Entity shall either:
 - 1. Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity shall have the right to immediately terminate this BAA and the Underlying Agreement(s) upon written notice to Business Associate;
 - 2. Upon written notice to Business Associate, immediately terminate this BAA and the Underlying Agreement(s) if Covered Entity determines that such breach cannot be cured.
- C. **Disposition of Protected Health Information upon Termination or Expiration.** Upon termination or expiration of this BAA, Business Associate shall either return or destroy, in Covered Entity's sole discretion and in accordance with any instructions by Covered Entity, all PHI in the possession or control of Business Associate and its agents and subcontractors. In such event, Business Associate shall retain no copies of such PHI.

However, if the Business Associate determines that neither return nor destruction of PHI is feasible, Business Associate shall notify Covered Entity of the conditions that make return or destruction unfeasible, and may retain PHI, provided that Business Associate (1) continues to comply with the provisions of this BAA for as long as it retains PHI, and (2) further limits Uses and Disclosures of PHI to those purposes that make the return or destruction of PHI unfeasible.

3. MISCELLANEOUS

- A. **Amendment to Comply with Law.** The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for the Parties to comply with the requirements of the Privacy and Security Regulations, as periodically amended, and any other Applicable Law.
- B. **Relationship to Underlying Agreement(s) Provisions.** In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement(s), the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement(s), and shall be considered an amendment of and supplement to such Underlying Agreement(s).
- C. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this BAA.
- D. **Notices.** Any notices required or permitted to be given hereunder by either party to the other shall be given in writing: (1) by personal delivery; (2) by bonded courier or by a nationally recognized overnight delivery service; (3) by United States first class registered or certified mail, postage prepaid, return receipt; (4) other method agreed to by the Parties concerned, in each case, addressed to the persons identified in Section 34 of the PAR or to such other addresses as the Parties may request in writing by notice given pursuant to this Section. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.
- E. **Applicable Law and Venue.** This BAA shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania (without regard to principles of conflicts of laws). The Parties agree that all actions or proceedings arising in connection with this BAA shall be tried and litigated exclusively in the State or Federal (if permitted by law and a party elects to file an action in Federal court) courts located in Dauphin County, Pennsylvania.
- F. **Interpretation.** Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Privacy and Security Regulations.

