

Attachment C

HIPAA ADDENDUM

The parties to this HIPAA Addendum (“Addendum”) are Michigan Health Information Network Shared Services (“HIN”) and _____ (“Participating Organization” or “PO”). This Addendum supplements and is made a part of the Simple Data Sharing Organization Agreement between the Parties (“Agreement”).

For purposes of this Addendum, PO is considered a Covered Entity and HIN is considered a Business Associate of such Covered Entity.

RECITALS

- A. Under the terms of the Agreement, PO wishes to send, receive, find, and use certain information with HIN, some of which may constitute PHI. In consideration of the receipt of PHI, HIN agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. HIN and PO intend to protect the privacy and provide for the security of PHI disclosed to HIN under the Agreement in compliance with HIPAA and the HITECH Act.
- C. As part of HIPAA, the Privacy Rule and Security Standards (defined below) require PO to enter into a contract containing specific requirements with HIN before the disclosure of PHI occurs.

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

1. **Definitions.** As used in this Addendum:

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

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

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

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

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

“**Individual**” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

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

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

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

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

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

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

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

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

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

2. Obligations and Activities of HIN.

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

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

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

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

2.5. HIN agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by HIN on behalf of PO, agrees in writing to the same restrictions and conditions that apply through this Addendum to HIN with respect to such information. Further, HIN shall include in its contracts with agents or subcontractors the right to terminate the contract if the agent or subcontractor commits a material breach under the contract, and HIN shall exercise such termination rights in the event of a material breach. These obligations do not pertain to subcontractors that act as mere conduits for the transport of PHI but do not access the information other than on a random or infrequent basis.

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

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

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

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

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

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

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

2.13. If HIN will communicate with any individuals who are the subject of PHI originating from or prepared for PO, HIN agrees to implement procedures to give timely effect to an individual's request to receive communications of PHI by alternative means or at alternative locations, pursuant to 45 CFR § 164.522(b), so as to ensure that PHI will only be communicated to those individuals designated in such a request as authorized to receive the PHI. If HIN provides records to agents, including subcontractors, who may also communicate with the individual, HIN shall ensure that the individual's request for communications by alternative means is provided to and given timely effect by such agents.

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

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

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

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

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

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

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

delay and in compliance with applicable law or reimburse the reasonable costs of the party that bears the responsibility to provide notification.

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

3. Permitted Uses and Disclosures by HIN

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

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

4. Obligations of PO.

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

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

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

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

5. Term and Termination.

5.1. Term. The Term of this Addendum shall be effective so long as the Agreement is in effect between the parties and shall terminate when all of the PHI in any form, recorded on any medium, or stored in any storage system provided by PO to HIN, or created or received by HIN on behalf of PO, is destroyed or returned to PO, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section. This

provision shall apply to PHI that is in the possession of HIN or agents of HIN. HIN shall retain no copies of the PHI, except as provided in paragraph 5.4.2.

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

5.2.1. Provide an opportunity for HIN to cure the breach or end the violation and terminate their relationship and the Agreement if HIN does not cure the breach or end the violation within the time specified by PO;

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

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

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

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

5.3.1. Provide an opportunity for PO to cure the breach or end the violation and terminate their relationship and the Agreement if PO does not cure the breach or end the violation within the time specified by HIN; or

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

5.4. Effect of Termination.

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

5.4.2. In the event that return or destruction of the PHI is infeasible, HIN shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as HIN maintains such PHI.

6. Indemnification.

Each party shall indemnify and hold harmless the other party and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by the indemnified party arising from a violation by the indemnifying party of its obligations under this Addendum. The indemnified party shall: (i) give the indemnifying party prompt written notice of such claim; and (ii) allow the indemnifying

party to control, and fully cooperate with the indemnifying party (at the indemnifying party's sole expense) in, the defense and all related negotiations. The indemnifying party shall not enter into any stipulated judgment or settlement that purports to bind the indemnified party without the indemnified party's express written authorization, which shall not be unreasonably withheld or delayed.

7. Miscellaneous.

7.1. Amendment. No provision of this Addendum may be modified except by a written document signed by a duly authorized representative of the parties. The parties agree to amend this Addendum, as appropriate, to conform with any new or revised legislation, rules and regulations to which PO is subject now or in the future including, without limitation, the Privacy Rule, Security Standards or Transactions Standards (collectively "Laws"). If within ninety (90) days of either party first providing written notice to the other of the need to amend this Addendum to comply with Laws, the parties, acting in good faith, are i) unable to mutually agree upon and make amendments or alterations to this Addendum to meet the requirements in question, or ii) alternatively, the parties determine in good faith that amendments or alterations to the requirements are not feasible, then either party may terminate this Addendum upon thirty (30) days' written notice.

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

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

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

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

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

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

7.8. Notice. All notices required under this Addendum shall be in writing and shall be deemed to have been given on the next day by fax or other electronic means or upon personal delivery, or in ten (10) days upon delivery in the mail, first class, with postage prepaid. Notices shall be sent to the addressees indicated below unless written notification of change of address shall have been given.

If to PO:

If to HIN:

Tel: _____
Fax: _____

Tel: _____
Fax: _____

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

IN WITNESS WHEREOF, the parties have executed this Addendum on the dates indicated below.

PARTICIPATING ORGANIZATION

MICHIGAN HEALTH INFORMATION NETWORK SHARED SERVICES

Signed

Signed

Printed

Printed

Date

Date