

Streamlined e-SDSOA (Simple Data Sharing Organization Agreement)

Please read this carefully. This is a legal agreement between you, on behalf of your organization and its authorized users and Michigan Health Information Network Shared Services (the “**HIN**”). All capitalized terms shall have the meanings set forth below. The terms below (collectively, the “**Terms**”) include, (i) a data sharing agreement, (ii) a business associate agreement, and (iii) required use cases, as well as (iv) a master service agreement (governing certain optional use cases; the statements of work which are subject to a separate agreement between the parties). HIN may modify or amend these Terms by posting a copy of the modified or amended Terms. You will be deemed to have agreed to any such modification or amendment by your decision to continue using the Services following the date in which the modified or amended Terms are posted on HIN’s website.

✓ By agreeing to these Terms, the organization identified in the registration process (the “**Participating Organization**” or “**PO**”) is agreeing to abide by the Terms and to ensure all its authorized users (“**PO Participants**”) also so comply. The individual agreeing to these Terms on behalf of PO represents and warrants that he or she has the authority to agree to these Terms on behalf of PO. PO agrees that HIN and its licensors, if any, may enforce the Terms against PO. If PO does not agree to the Terms, PO is not entitled to use the Services and must cease any such use immediately.

TERMS OF SERVICE

These Terms govern use of the Services (as defined below), which may include computer software (including any online and electronic documentation) and associated media and printed materials. These Terms apply to updates, enhancements or other add-on components that HIN may provide or make available, unless HIN provides other terms with the update, enhancement or add-on component.

1. DEFINITIONS

Any capitalized terms used herein but not defined are available:

<https://mihin.atlassian.net/servicedesk/customer/portal/12/article/243400768> may be modified from time to time.

2. HIN SERVICES

2.1. **Grant of Right to Use.** HIN grants to PO a nonexclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to have access to and use the Services in accordance with these Terms. The parties agree that nothing in these Terms is intended to transfer or assign any ownership interest or rights to PO or PO Participants. PO may use the Services to send, receive, find, and use Message Content only for the purposes set forth in the “Message Content” Section of these Terms, and subject to the additional terms and conditions set forth in any Use Case. This license does not grant any rights to obtaining future upgrades, updates, enhancements, or supplements of the Services. If upgrades, updates, enhancements, or supplements of the Services are obtained, however, the use of such upgrades or updates is governed by these Terms and any amendments to it unless other terms accompany the upgrades, updates or supplements in which case those terms apply.

2.2. **HIN HISP.** If PO or PO Participant is using HIN’s Health Information Service Provider (“**HISP**”) capability, PO and each PO Participant is subject to the DirectTrust Directory Policy Agreement and additional HISP terms of use available at: www.mihin.org/HISP.

2.3. **Additional Restrictions.** PO acknowledges and agrees that the Services constitute the trade secrets and confidential information of HIN and/or its service provider(s), if any. PO further acknowledges that the

Services may be protected by copyright law and international treaty provisions. PO shall not permit any person under the control of PO other than PO Participants to access and/or use the Services. PO shall not, nor shall it permit any PO Participant or third party, over which it exercises control, to duplicate, modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based on the Services. The Services shall not be copied or incorporated into any other computer program, hardware, firmware or product, except as specifically provided for under these Terms. PO shall not obtain any rights to the Services except the limited rights to use the Services expressly granted in the “**Grant of Right to Use**” Section of these Terms.

2.4. **Suspension.** HIN and its licensors will be entitled, on reasonable grounds, including the reasonable belief of fraud or illegal activity by PO or any PO Participant in their use of the Services, to suspend access to the Services.

3. RESPONSIBILITIES OF PO

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

3.2. **Compliance in Using, Disclosing and Obtaining Information.** HIN and PO are each separately responsible for ensuring that it complies with Applicable Laws and Standards and the applicable Use Case in sending, receiving, finding, or using information using the Services. PO is responsible for obtaining and requiring its PO Participants to obtain any authorization or consent from any individual whose PHI it sends, receives, finds or uses through the Services. With respect to those activities involving the use or disclosure of PHI, the Parties shall comply with the Business Associate Addendum. In addition to those requirements in the Business Associate Addendum, in the event PO sends or receives Message Content for which PO is not authorized to send or receive, PO will immediately inform HIN, delete such Message Content, and require its PO Participants to do so.

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

3.4. **System Security.** PO shall be responsible for maintaining a secure environment to connect to the Services which permits compliance with the Business Associate Addendum, all Applicable Laws and Standards, and any Use Case.

3.5. **PO Participants.** PO will ensure that each PO Participant complies with these Terms and the documentation including all Use Case documentation, as may be amended from time to time, and any instruction issued by HIN and its licensors with respect to the use of the Services. For all Use Cases involving the Services, PO shall send, receive, find or use Message Content only with PO Participants that have agreed to abide by the applicable provisions of these Terms and the corresponding Exhibit(s). PO shall bear sole responsibility for ensuring that any Message Content sent to the Services meets the data integrity, format, security, and timeliness standards prescribed by the applicable Exhibit. PO is fully liable for the acts or omissions of its PO Participants.

3.6. To the extent that PO delegates its duties under these Terms to a third party (by contract or otherwise) and such third party will have access to Message Content, that delegation shall be in writing and require the third party to agree to the same restrictions and conditions that apply through these Terms to PO.

3.7. PO hereby represents that at the time of sending, the Message Content it sends is a faithful representation of the data contained in, or available through, its System.

3.8. PO represents and warrants that at the time of disclosure it has sufficient authority to send such Message

Content.

3.9. PO represents and warrants that at the time of receipt it has sufficient authority to find such Message Content.

3.10. PO has valid and enforceable agreements with each of its technology partners, including HSPs, that require the technology partner to, at a minimum: (i) comply with Applicable Laws and Standards and (ii) protect the privacy and security of any Message Content to which it has access. PO shall direct its HSPs and other technology partners to reasonably cooperate with HIN and the other TDSOs on issues related to the Services, under the direction of PO.

3.11. **Resending.** For Exhibits where PO is sending Message Content to the Services, or using the Services to query to find Message Content, PO shall resend, or make provisions to have resent, queries, Notices, and Message Content, as applicable, to the Services, which (i) PO failed to successfully send to the Services, or (ii) HIN failed to successfully send to a TDSO, upon PO receiving a failure Notice from the Services so long as the Services does not send such failure Notice after having first acknowledged and accepted with no errors the message from PO. In the event a query to find Message Content is no longer needed by the PO, the retransmission may be done at PO's option.

3.12. **Notices.** For Exhibits where PO is sending Message Content to the Services, or using the Services to query to find Message Content, PO shall, on a Transactional Basis, send any Notices received from the Services to the PO Participant that sent the query or Message Content (e.g., sending an acknowledgment of submission received from the Services). In cases where sending the Notices to the PO Participant's system would cause undue harm, this requirement can be waived on a case by case basis and with written approval from HIN. The specifications for the Notices and Message Content are set forth on the HIN web site in the Use Case Implementation Guide for the applicable Exhibit.

3.13. **Validation and Conformance.** For Exhibits where PO is sending Message Content to the Services, or using the Services to query to find Message Content, PO shall validate the query or Message Content to ensure that it (i) is properly addressed with both sender and receiving facility; (ii) includes the purpose of use; and (iii) conforms to the Use Case Implementation Guide and other specifications which may be set forth in each Exhibit.

3.14. **Sending.** For Exhibits where PO is sending Message Content to the Services, or using the Services to query to find Message Content, PO shall send to the Services the query or Message Content that (i) is properly addressed with both sender and receiving facility; (ii) includes the purpose of use; and (iii) conforms to the Use Case Implementation Guide and other specifications which may be set forth in each Exhibit.

3.15. **Unauthorized Message Content.** In the event PO sends, receives, finds or uses Message Content for which PO is not authorized to send, receive, find or use, PO will promptly upon discovery inform HIN, delete such Message Content, and require its PO Participants to delete such Message Content as well.

3.16. **Change Coordination.** PO shall reasonably cooperate with HIN to schedule and coordinate any changes to the production systems or networks involved in sending, filtering, translating, forwarding, finding or receiving Message Content so as to ensure the reliability and availability of the production environments according to the Service Interruption Procedure.

3.17. **Troubleshooting and Support.** PO is responsible for the initial troubleshooting and support for its PO Participants. If PO cannot resolve a trouble with a PO Participant, PO will report the trouble as specified by the Service Interruption Procedure.

3.18. **Patient Consent.** PO agrees that when it sends, receives, finds or uses Message Content PO will practice consent management and comply with Applicable Laws and Standards. This process enables all parties to determine what Patient Data can be accessed at various points of care. By way of example, if an Exhibit

specifies sending Health Information that may not be sent without patient consent under HIPAA or SAMHSA rules, PO must not send any Message Content or Patient Data containing Health Information for which an express patient authorization or consent is required (e.g., mental or behavioral Health Information) without first confirming that a valid patient consent exists and permits Patient Data to be sent only to the receiving Health Provider(s) named by the patient on the consent.

3.19. **Data at Rest.** If PO or PO Participant determines, after conducting a risk assessment and in accordance with HIPAA, that encryption of data at rest is commercially reasonable and appropriate for Message Content, then PO or PO Participant shall encrypt Message Content while at rest in any PO Source System(s).

3.20. **Acknowledgements and Negative Acknowledgments.** If an applicable Use Case employs ACKS/NACKs, and PO receives any NACKs for that Use Case, it: **(i)** will act upon all ACKS/NACKs; **(ii)** will take any necessary corrective action based on ACKS/NACKs; and **(iii)** will send ACKS/NACKs directly back to the PO Participant or take responsibility for communication and correction.

3.21. **Secure Transport.** PO shall send, receive, find or use the Message Content and Notices using one of the HIN approved secure transport methods, format and content.

3.22. **Electronic Addresses.** If the applicable Use Case involves sending, receiving or finding Message Content, then PO and its PO Participants shall provide and maintain correct Electronic Addresses and Electronic Service Information (ESI) with HIN.

3.23. **Privacy Tags.** If required by the HIN Board, the sender of any Message Content that contains Specially Protected Information must include special machine readable Privacy Tags in the Message Content as specified in the Use Case Implementation Guide. If Message Content contains any Privacy Tags, the sending PO must confirm that patient has consented to recipient receiving the Message Content before PO sends the Message Content.

3.24.3.24.

4. USE CASES

4.1. **Use Cases.** The terms of a specific Use Case are set forth in a “Use Case Exhibit” or “UCE” and are subject to these Terms and incorporated herein by reference. Required Use Cases are set forth in **Addendum 2** and, upon acceptance of these Terms, PO will have been deemed to accept the terms of such Use Cases. To enter into additional Use Cases, PO may select the appropriate Use Cases at the URL here: <https://mihin.atlassian.net/servicedesk/customer/portal/12/article/243269657?src=-1186642066>.

4.2. **Pilot Activities.** To enter into a Pilot Activity, PO must review and accept the terms of that Pilot Activity. The terms of a specific Pilot Activity are set forth in a “Pilot Activity Exhibit” or “PAE” and, upon acceptance, each Pilot Activity Exhibit is subject to these Terms and incorporated herein by reference.

4.3. **Additional Terms.** The Parties may set forth additional terms applicable to a specific Use Case or Pilot Activity in each Exhibit, respectively.

5. MESSAGE CONTENT

PO and HIN shall only send, receive, find or use Message Content pursuant to each Use Case as follows:

5.1. **Primary Use.** Message Content and related Notices are used during the term of an Exhibit and only for the use(s) set forth in that Exhibit.

5.2. **Additional Permissible Use.** This section sets forth additional permissible uses that apply to many, but not all, Use Cases. Each Exhibit specifically identifies which of the below additional permissible uses *do not* apply to that Use Case in the corresponding section of the Exhibit.

5.2.1. TPO. Message Content may be used by Health Providers for Treatment, Payment and/or Healthcare Operations consistent with the requirements set forth in HIPAA;

5.2.2. Public Health. Message Content may be used for public health activities and reporting as permitted by Applicable Laws and Standards;

5.2.3. Federal Programs. Message Content may be used as required by Federal Programs.

5.2.4. Individual Authorization. Message Content may be used and disclosed pursuant to an authorization provided by the individual who is the subject of the Message Content or such individual's personal representative in accordance with Applicable Laws and Standards;

5.2.5. Archiving. Message Content may be archived by HIN for audit, trending, and quality control purposes.

5.2.6. Use Case Enablement. Message Content may be used in other Use Cases only if PO enters into other UCEs that require Message Content from that Use Case.

5.2.7. Pilot Activities. Message Content may be used by PO or HIN subject to a mutually agreed Pilot Activity Exhibit developed under a formally approved pilot project, provided that such purposes are mutually agreed upon and consistent with Applicable Laws and Standard. Pilot approval shall be obtained either from the HIN Board or the Use Case working group. This provision will be deleted by most UCEs.

5.2.8. Enrichment. Message Content may be enriched by HIN for the purpose of standardizing and simplifying the ability of other TDSOs that receive the data to use it. This may include appending additional information (e.g. a risk score) to enhance and streamline automated processing by receivers of enriched Message Content.

5.2.9. PO Usage of Message Content. Subject to any restrictions or limitations on use set forth in any Exhibit executed by PO, PO may use Message Content in accordance with the terms of any agreements or authorizations in place between PO and its PO Participants, provided that such PO Participants have the full rights and authority to grant the applicable rights.

5.2.10. PO and HIN may send, receive, find, and use Message Content for "Individual Access" and "Benefits Determination" as those terms are defined in the most recent version of the Trusted Exchange Framework and Common Agreement as published in the Federal Register. Prior to publication of the Trusted Exchange Framework and Common Agreement in the Federal Register, those terms shall have the meaning set forth in the Draft Trusted Exchange Framework published by the Office of the National Coordinator for Health Information Technology on January 5, 2018.

5.3. **Limitations on Use.** The applicable Exhibit will set forth any additional limitations on use of Message Content.

5.4. **Pilot Activity Use.** Message Content sent, received, found or used pursuant to each Pilot Activity Exhibit shall only be used during the term of the Pilot Activity Exhibit and only for the development of future Use Cases as further set forth in each Pilot Activity Exhibit. Upon termination or expiration of a Pilot Activity Exhibit, PO shall delete and render unrecoverable and unreadable all Message Content from the Pilot Activity from all storage locations.

5.5. **Use Case Implementation Guide.** A Use Case Implementation Guide for each Exhibit will specify the Conforming Message for each data sharing scenario set forth in the Exhibit. All Message Content sent to the Services shall meet these specifications. As applicable, a Use Case Implementation Guide for the Use Case being piloted may still be undergoing revisions but should be finalized during the Pilot Activity and will specify the Conforming Message for each data sharing scenario set forth in the Pilot Activity Exhibit.

5.6. **Validation.** HIN shall optionally validate all Conforming Messages.

5.7. **Related Use Case Requirements.** Certain Use Cases may require PO to enter into other Use Cases. These Use Cases are interdependent to fully support each Use Case. Each Exhibit will set forth any such requirements.

6. HIN'S RESPONSIBILITIES

6.1. **HIN Data Sharing.** HIN shall send, receive, find or use Message Content and Notices with PO and with other TDSOs and on a Transactional Basis as applicable for each Exhibit.

6.2. **Confidentiality and Security.** HIN shall use commercially reasonable efforts to protect the confidentiality and security of Message Content for so long as such Message Content is under the control of HIN.

6.3. **Change Coordination.** HIN shall reasonably cooperate with PO to schedule and coordinate any changes to the production systems or networks involved in Message Content sending, filtering, translating, forwarding, finding or receiving activities so as to ensure the reliability and availability of the production environments according to the Service Interruption Procedure.

6.4. **HIN and TDSO Compliance.** HIN shall send, receive, find or use PO Message Content only with other TDSOs that have agreed to abide by these Terms and the corresponding Exhibit(s).

6.5. **Secure Transport.** HIN shall send, receive, find or use the Message Content and Notices using one of the HIN approved secure transport methods, format and content.

7. SERVICE LEVEL

7.1. **Timeliness of Exchange.** The Parties agree that the Message Content and Notice exchange shall occur on a Transactional Basis unless otherwise required by an Exhibit.

7.2. **Queued Messages.** Notwithstanding anything in this Section, if the Parties experience a Service Interruption, then Message Content and Notices queued during the Service Interruption shall be retransmitted as soon as practicable upon such Service Interruption ending. Unless specified otherwise in an Exhibit, HIN may queue Message Content and Notices for up to ninety-one (91) days.

7.3. **Service Interruptions.** The Parties agree to notify each other of any scheduled or unscheduled Service Interruption in accordance with the procedure available at: www.mihin.org/service-interruptions (the "**Service Interruption Procedure**").

8. AUDITING

8.1. **Abilities to Audit.** The Parties shall monitor and audit all access to and use of their respective systems related to these Terms, for system administration, security, regulatory compliance and other legitimate purposes consistent with each Party's respective standard operating procedures.

8.2. **Audit Logs.**

8.2.1. **PO.** PO shall log the following information: **(i)** date and time Message Content was accessed and the identity (*e.g.*, unique identifier) of the individual or system, as applicable, accessing the Message Content; **(ii)** date and time Message Content was sent to the Services and the identity of the individual or system, as applicable, sending the Message Content; **(iii)** date and time a Notice was sent or received from or to the Services; **(iv)** the unique message identifier for the Message Content accessed, sent, or received; **(v)** the Message Content accessed; and **(vi)** any Notices, failures, or network events.

8.2.2. **HIN.** HIN shall log the following information: **(i)** name of PO and any PO Participants accessing the Services; **(ii)** the identity (*e.g.*, unique identifier) of the individual or system, if applicable, accessing the Message Content; **(iii)** the date and time the access occurred; **(iv)** the Message Content accessed; **(v)** a description of Message Content accessed; and **(v)** any Notices, failures, or network events. Except as provided in the immediately preceding sentence, HIN shall not be obligated to maintain and shall not be responsible for, either maintaining records of Message Content exchange between the Parties or inspecting Message Content

8.3. **Production of Audit Logs.** Upon a good faith written request by a Party, the other Party shall either: **(i)** produce the requested audit logs within five (5) business days; or **(ii)** provide to the other Party a reason why it is unable to produce such audit logs within five (5) business days and an estimate as to when such audit logs will be provided.

8.4. **Retention of Audit Logs.** The Parties shall retain audit logs in accordance with Applicable Laws and Standards and in all cases for at least thirty (30) days.

9. DISCLAIMER OF WARRANTY

THE SERVICES ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND AND HIN HEREBY DISCLAIMS ALL WARRANTIES EXPRESS AND IMPLIED WITH REGARD TO THE SERVICES AND THESE TERMS INCLUDING ANY IMPLIED WARRANTY OF TITLE, NON-INFRINGEMENT, OF MERCHANTABILITY OR QUALITY, OR OF FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, HIN DISCLAIMS ANY WARRANTY THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM HIN OR ELSEWHERE WILL CREATE ANY WARRANTY. PROVIDED HIN HAS PROPERLY INSTALLED, CONFIGURED, TESTED, SECURED, AND MAINTAINED THE SERVICES, HIN SHALL HAVE NO RESPONSIBILITY FOR OR LIABILITY RELATED TO THE ACCURACY, CONTENT, CURRENCY, COMPLETENESS, OR DELIVERY OF ANY MESSAGE CONTENT PROVIDED BY A TDSO TO THE SERVICES. HIN ASSUMES NO LIABILITY AND DOES NOT MAKE ANY WARRANTIES RELATING TO THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES. FOR PURPOSES OF THIS DISCLAIMER, ALL REFERENCES TO HIN WILL INCLUDE HIN’S SERVICE PROVIDERS, SUPPLIERS, AND VENDORS. Some states, territories and countries do not allow certain warranty exclusions, so to that extent the above exclusion may not apply to PO.

10. INDEMNIFICATION

Unless otherwise prohibited by applicable law, PO agrees to defend, indemnify and hold harmless (including payment of reasonable attorneys’ fees) HIN from and against any liability, claim, action, loss, damage, or expense (including court costs and reasonable attorneys’ fees) based on any third-party claims arising out of, or relating to: (a) unauthorized or inappropriate use of or modifications by PO to the Services; or (b) HIN’s sending, receiving, finding, or using any Message Content sent, received, found, or used by PO, except to the extent such sending, receiving, finding, or using Message Content by HIN is in violation of these Terms.

11. LIMITATION OF LIABILITY

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

11.2. **TOTAL LIABILITY.** THE PARTIES' TOTAL CUMULATIVE LIABILITY TO EACH OTHER OR TO ANY THIRD PARTY FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO, AND WILL NOT EXCEED, THE GREATER OF TOTAL AMOUNTS PAID OR PAYABLE UNDER THESE TERMS OR \$10,000, WHETHER ARISING UNDER THESE TERMS OR ANY ATTACHMENTS.

11.3. **Acknowledgement of Risk.** The foregoing limitations and exclusions of liability do not apply to (i) the indemnification obligations set forth in the "**Indemnification**" Section of these Terms; or (ii) to claims arising out of or related to either party's infringement or misappropriation of the other party's Intellectual Property Rights. With this sole exclusion, the parties acknowledge and agree that the provisions hereof that disclaim warranties, exclude consequential damages or other damages or remedies or limit liability shall remain fully valid, effective and enforceable in accordance with their respective terms, even under circumstances that cause an exclusive remedy to fail of its essential purpose.

12. ADDITIONAL PRODUCTS & USE CASES

12.1. Certain products ("**Products**") are available on a fee-paid basis and subject to the MiHIN Statement of Work-("**Statement-of-Work**"-or-"**SOW**")-found-here:

<https://mihin.atlassian.net/servicedesk/customer/portal/12/article/244350994?src=1842860582>

Upon both parties' execution of the Statement of Work, Products and the indicated additional Use Cases shall be deemed within the meaning of Services hereunder. The terms and conditions in the Statement of Work are in addition to those in this Agreement, and incorporated herein by reference. In the event of any conflict between the Statement of Work and this Agreement, the terms of the Statement of Work shall control, but only to the extent of such conflict.

13. CONFIDENTIALITY

13.1. **Use and Disclosure Restrictions.** Each party will not use the other party's Confidential Information except as expressly permitted herein, and will not disclose such Confidential Information to any third party, except to employees and consultants who have a bona fide need to know such Confidential Information; provided, that each such consultant first executes a written agreement (or is otherwise already bound by a written agreement) that contains use and nondisclosure restrictions at least as protective of the disclosing party's Confidential Information as those set forth herein. However, each party may disclose Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that to the extent practicable the disclosing party gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors. Notwithstanding the foregoing, HIN may provide a copy of a redacted version of these Terms to service provider(s) upon request, such redaction to include at least any Confidential Information of PO.

13.2. **Equitable Relief.** Each party acknowledges that the unauthorized disclosure or use of the disclosing party's Confidential Information is likely to cause irreparable harm to the disclosing party, for which the award of damages will not be an adequate remedy. Consequently, the disclosing party shall be entitled to obtain

preliminary and permanent injunctive relief to restrain such unauthorized disclosure or use, in addition to any other relief to which the disclosing party may be entitled at law or in equity.

13.3. **Protected Health Information.** The terms and conditions of the Business Associate Addendum shall apply to the parties' use, access and disclosure of PHI.

14. TERM & TERMINATION

14.1. **Term.** These Terms will commence on the Effective Date and will remain in effect for as long as PO uses the Services (the "**Term**").

14.2. **Termination.** At PO's discretion, if PO no longer wishes to be bound by these terms (subject to the "Survival" Section), it must stop using the Service. PO must provide at least ninety (90) days' notice prior to its termination of the use of the Services.

14.3. **Survival.** The rights and obligations of the parties under Sections 2, 3, 4, 9, 10, 11, 12 (to the extent of fees due and owing as of termination), 13 (to the extent a receiving party retains possession of Confidential Information stored on backup media), 13, 14.3, 16.2, 16.3, and 16.5 will survive any expiration or termination of these Terms.

15. [RESERVED]

16. GENERAL

16.1. **Assignment.** Neither Party may assign or transfer any or all of its rights and/or obligations under these Terms or any part of it, nor any benefit or interest in or under it, to any third party without the 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.

16.2. **Governing Law.** These Terms will be governed by and construed in accordance with the laws of the State of Michigan without reference to or application of conflict of laws rules or principles.

16.3. Dispute Resolution.

16.3.1. As a Party's sole remedy when a dispute arises between either PO and HIN or between PO and another TDSO (a "**Dispute**") regarding these Terms, PO will send written notice to the appropriate HIN Committee. Such written notice shall set forth in detail and with clarity the problems that PO has identified. Within sixty (60) calendar days of receiving the notice, such HIN Committee will convene a meeting of the subcommittee with responsibility over dispute resolution (the "**Dispute Resolution Subcommittee**"). The Dispute Resolution Subcommittee will be comprised of individuals selected by the HIN Board in accordance with its policies and procedures. During this meeting, each TDSO will be able to present its version of the Dispute and any information that it believes is pertinent to the Dispute Resolution Subcommittee's decision. The Dispute Resolution Subcommittee will have the ability to request additional information from the TDSOs to help it make its determination. The Dispute Resolution Subcommittee, however, will not have the authority to compel a response or the production of testimony or documents by the TDSOs. To the extent that the TDSOs do respond to requests of the Dispute Resolution Subcommittee by producing documents, TDSOs will have the ability to mark the documents produced as "Confidential Information" and the Dispute Resolution Subcommittee will treat those documents in accordance with the "**Confidentiality**" Section of these Terms.

16.3.2. Within fifteen (15) calendar days of the Dispute Resolution Subcommittee meeting, the Dispute Resolution Subcommittee will issue a written, nonbinding recommendation for the HIN Board. Within

sixty (60) days of receipt of the Dispute Resolution Subcommittee recommendation the HIN Board will issue a final decision resolving the Dispute

16.3.3. Notwithstanding the foregoing, in the event of a Dispute wherein PO maintains a reasonable belief of imminent harm, PO may ask that the Executive Director of HIN request the chairman of the HIN Board to call an emergency meeting of the HIN Board to issue a final decision resolving the Dispute.

All such discussions shall be treated as Offers to Compromise Under Rule 408 of the Federal Rules of Evidence.

16.4. **Severability.** If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision of the Terms will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

16.5. **Waiver.** No failure or delay by any Party in exercising its rights under these Terms shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.

16.6. **Notices.** Any notice, request, demand or other communication required or permitted to be given under these Terms will be given in writing (including via email), will reference these Terms and will be deemed properly given: (a) when actually delivered in person; (b) two (2) business days after deposit with a nationally recognized express courier; or (c) five (5) business days after mailing via certified mail, postage prepaid. Any such notice, request, demand or other communication, if sent to HIN, will be sent to: legal@mihin.org and if to PO will be sent to the e-mail address(es) provided by PO during registration. Either Party may change its address for notices under these Terms by giving written notice to the other Party by the means specified in this Section. Notwithstanding the foregoing, any written notice required to be sent under the “**Term and Termination**” Section of these Terms must be sent by U.S. mail (first-class, airmail or express) or commercial courier.

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

16.8. **Force Majeure.** Neither Party will be liable for any failure or delay in its performance under these Terms due to causes beyond its reasonable control, including denial-of-service attacks, shortages of or inability

to obtain labor, energy, raw materials or supplies, war, terrorism, riot, acts of God or governmental action.

16.9. **Relationship of Parties.** The Parties to these Terms are independent contractors and these Terms will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

16.10. **Third Party Beneficiaries.** No third party shall have the right to claim a beneficial interest in or to any right occurring by virtue of these Terms between HIN and PO.

16.11. **Counterparts.** These Terms may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

16.12. **Headings.** The headings in these Terms are for the convenience of reference only and have no legal effect.

16.13. **Insurance.** Throughout the Term of these Terms, the Parties shall maintain in force insurance at the amounts customarily and reasonably entered into for agreements of this type.

16.14. **Debarment, Suspension and Investigation.** PO represents and warrants to the best of its knowledge that neither it, nor any of its employees directly involved in performing under these Terms: (a) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or contractor; (b) have been convicted of fraud in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction nor contract under a public transaction; or (c) are currently under a final order issued by any federal, state, local or international regulatory or law enforcement organization finding a violation of Applicable Laws and Standards related to the privacy or security of PHI that will materially impact the PO's ability to fulfill its obligations under these Terms. PO shall inform HIN if at any point during its participation in the Services it comes under such an order or any order that will materially impact the PO's ability to fulfill its obligations under these Terms.

16.15. **Compliance with Fraud and Abuse Laws.** Neither Party has provided or received anything of value with the intent to induce referrals from or to the other Party. Notwithstanding any unanticipated effect of any of the provisions herein, neither Party shall intentionally conduct itself under the terms of these Terms in a manner to constitute a violation of the Medicare and Medicaid Fraud and Abuse Provisions (42 U.S.C. Sections 1395nn(b) and 1396h(b)), including the Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977 and the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. Sections 1320a-7 et seq.) or any other applicable federal, state or local law, rule, or regulation. The parties agree that the execution of certain Use Cases may require the addition of certain flow down terms. In such case, the Parties agree to comply with the terms of such flow down terms in the applicable Use Case.

16.16. **Order of Precedence.** Except as expressly stated otherwise in these Terms, in the event of any conflict or inconsistency between the terms of these Terms and any other document ancillary or relating thereto, the following order of precedence shall apply, but only to the extent of an express conflict or inconsistency: (a) the Attachments; (b) these Terms.

16.17. **Entire Agreement.** These Terms, including all Addendums, constitutes the complete understanding and agreement of the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to its subject matter. HIN may update these Terms from time to time. Unless otherwise specified in the applicable section, PO's continued use of the Services serves as PO's acceptance of the revised terms.

Addendum 1

Business Associate Addendum

The parties to this Business Associate Addendum (“Addendum”) are Michigan Health Information Network Shared Services (“HIN”) and the party accepting the Terms (“PO”). This Addendum supplements and is made a part of the Terms.

RECITALS

- A. Under the Terms, 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 Terms 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. Obligations and Activities of HIN.

- 1.1. 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.
- 1.2. 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.
- 1.3. 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.
- 1.4. 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.
- 1.5. 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.
- 1.6. 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).

1.7. 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.

1.8. 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's compliance with the Privacy Rule.

1.9. 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.

1.10. 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.

1.11. 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).

1.12. 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.

1.13. 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.

1.14. 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.

1.15. 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.

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

1.16.1. 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;

1.16.2. 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

1.16.3. 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.

1.17. 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.

1.18. 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.

2. Permitted Uses and Disclosures by HIN

2.1. 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.

2.2. 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's prior written permission.

3. Obligations of PO.

3.1. 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.

3.2. 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.

3.3. 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.

3.4. 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.

4. Term and Termination.

4.1. Term. The Term of this Addendum shall be effective so long as the Terms are in effect between the parties and shall terminate when all of the PHI in any form, recorded on any medium, or stored in any storage system provided by 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.

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

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

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

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

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

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

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

4.4. Effect of Termination.

4.4.1. Except as provided in paragraph 5.4.2 of this Section, upon termination of the Terms, for any reason, HIN shall return or, at PO’s 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.

4.4.2. 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.

5. 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.

6. Miscellaneous.

6.1. 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.

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

6.3. 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.

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

6.5. 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.

6.6. 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.

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

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.

8 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.

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.

Addendum 2

REQUIRED USE CASE EXHIBITS

- (1) HEALTH PROVIDER DIRECTORY**
- (2) COMMON KEY SERVICE**
- (3) ACTIVE CARE RELATIONSHIP SERVICE**

USE CASE EXHIBIT

Use Case Name: Health Provider Directory

This Use Case Exhibit (“UCE”) is effective and binding upon PO and subject to the Terms. HIN and PO are referred to herein collectively as “Parties” and individually as a “Party.”

~~1.~~ **PURPOSE.** The purpose of this UCE is to define PO and HIN roles and responsibilities as they relate to populating the Health Provider Directory (“HPD”) with Health Provider data and ESI/Endpoint data. HIN will maintain the Directory with as much current Health Provider information as is available, and assist PO in leveraging existing or establishing new capabilities to provide information on their participants, Person Records, Organization Records and any related Affiliations, and Electronic Addresses/Endpoints/Electronic Service Information (ESI). Authorized Health Providers can use the HPD to look up information.

~~2.~~ **[RESERVED]**

~~3.~~ **DEFINITIONS.**

3.1 Transactional Basis means the transmission of Message Content or a Notice within near real time of delivery or receipt of Message Content or Notice from a sending, receiving, or finding party for API or portal usage. For Message Content sent as files the Transactional Basis shall be monthly.

3.2 Message Content means Health Provider Information, or a query containing a subset of Health Provider Information seeking more complete Health Provider Information.

~~4.~~ **USE CASE DETAILS.**

4.1 Primary Use Primary uses include:

- (i) PO sending up-to-date Message Content to HIN/HPD for the purpose of maintaining a reliable HPD;
- (ii) HIN Receiving Message Content and maintaining a reliable HPD;
- (iii) PO or HIN finding Message Content or portions of Message Content such as a provider’s ESI, (e.g. a Direct Address or other Endpoint), to facilitate secure exchange of Health Information;
- (iv) PO or HIN using Message Content for secure exchange of Health Information, for reporting purposes, and for other Use Cases where Message Content is needed.

4.2 Additional Permissible Use

4.2.1 The following sections of the Terms are not permissible uses under this Exhibit: 5.2.7 (“Pilot Activities”).

4.3 Limitations on use. No additional limitations.

4.4 Related Use Case Requirements. No related Use Case requirements. However, other Use Cases require this UCE such as ADT Notifications and Medication Reconciliation.

~~5.~~ **SERVICE INTERRUPTIONS.** No service interruption variations.

6. RESPONSIBILITIES OF THE PARTIES.

6.1 PO Responsibilities

6.1.1 PO shall send Message Content to HIN on a Transactional Basis or can send Message Content in files which follow the UCIG.

6.1.2 PO shall send the data using one of the HIN-approved secure transport methods, format and content.

6.1.3 If the Message Content sent from PO to HIN is not received successfully in full, HIN shall send a Notice to PO and within a reasonable period after receiving the failure Notice the PO shall resend or make provisions to have the Message Content sent to HIN again until it is successfully received by HIN.

6.1.4 PO is responsible for the security and protection of Message Content data.

6.1.5 Message Content is for use within HPD. PO may extract individual data elements for individual Health Providers but PO shall not download batches of Message Content from HPD for storage in another location without written permission from HIN.

6.2 HIN Responsibilities

6.2.1 HIN shall be responsible for protecting Message Content.

6.2.2 HIN shall process Message Content received from PO on a predetermined schedule.

6.2.3 HIN shall be responsible for successfully loading Message Content into the HPD on a predetermined schedule and notifying PO of any loading errors.

7. OTHER TERMS.

7.1 PO Contacts. PO shall provide to HIN the appropriate contact information for this Use Case.

8. IMPLEMENTATION GUIDE(S). The Use Case Implementation Guide(s) for this Use Case are available at: <https://mihin.org/implementation-guides/>.

USE CASE EXHIBIT

Use Case Name: Common Key Service

This Use Case Exhibit (“UCE”) is effective and binding upon PO and subject to the Terms. HIN and PO are referred to herein collectively as “Parties” and individually as a “Party.”

1. Purpose. The purpose of the Common Key Service (CKS) Use Case is to assign a “common key” (HIN Common Key) which is an additional person matching attribute based on a Master Person Index (MPI) algorithm. A HIN Common Key strengthens the link between patients and their health information that is stored in all health information systems which exchange data. The CKS invokes an MPI to match patients and assigns a HIN Common Key to each unique person.

2. [RESERVED]

3. Definitions. Capitalized terms used herein and not otherwise defined, shall have the meaning given them in the Terms.

3.1. **Foreign Key** means a key being used by one or more systems that is not native to the systems using the key but the key was generated by a different system.

3.2. **Transactional Basis** means the transmission of Message Content or a Notice within 20 seconds of delivery or receipt of Message Content or Notice from a sending, receiving, or finding Party in scenario 2, Routine Use of Common Key Service.

3.3. **Message Content** means a HIN Common Key.

4. Use Case Details.

4.1. Primary Use

4.1.1. The CKS and Message Content assigned shall only be used by PO or PO Participant for linking persons to their health information for system to system communication between PO or PO Participant Source System(s) and HIN, and only during the term of this UCE.

4.1.2. Once assigned, Message Content may be stored as a Foreign Key in PO or PO Participant Source System(s) that stores health information for that person for purposes of linking the person to other systems where their health information is stored.

4.1.3. HIN may use Message Content in conjunction with any HIN Services if such usage conforms to all requirements in this Exhibit and the Terms, including sharing Message Content with other TDSOs that are bound by this Exhibit and the Terms.

4.1.4. Message Content may be included in Messages sent to or received from HIN during the term of the UCE as an additional attribute to enhance the ability to accurately identify the patient and to increase privacy and security.

4.1.5. PO may use Message Content in lieu of demographic information for patient matching only if combined with at least one discriminating second attribute (e.g. date of birth). The foregoing does not relieve PO of its obligation under other Exhibits to send, receive, find, or use specified information as part of other Exhibits’ UCIGs.

4.1.6. Message Content shall not be published by HIN, PO or PO Participants unless otherwise required by law.

4.1.7. Message Content shall not be shared in any visible way with any third party or included in any displayed or printed communication with a patient by HIN, PO or PO Participants. Access to the Message Content shall be limited to those individuals with a need to know for performing under this Exhibit or for operational or system maintenance.

4.1.8. HIN may make use of Message Content during the term of this Exhibit for the purposes of further refining and defining the CKS and other HIN Use Cases.

4.1.9. All Message Content may be used in combination with other attributes to:

4.1.9.1. Identify duplicate records in an MPI or Source Systems.

4.1.9.2. Identify potential linkages between records from different Source Systems and an MPI.

4.1.9.3. Detect incorrect identifiers for individuals in an MPI or Source System.

4.2. **Additional Permissible Use** Additional permissible use, if mutually agreed in writing by the Parties, may be specified during the term of the Exhibit.

4.2.1. PO may share Message Content with PO Participants subject to all terms and conditions in this Exhibit and the Terms after obtaining express written permission of HIN.

4.2.2. PO is responsible for providing Message Content to HIN-approved PO Participants via one of the HIN-approved secure transport methods, format and content.

4.2.3. PO Participant is responsible for the Message Content after it receives the Message Content and PO is responsible for ensuring PO Participants' compliance with the terms of this Exhibit as required under the Terms.

4.2.4. HIN may send Message Content and associated patient demographic information to third-party validation and data cleansing services provided HIN enters industry-standard data destruction agreements with any such third parties.

4.2.5. The Parties may make additional use of Message Content as permitted under the Terms except for the following uses set forth in the Terms shall not apply to this Exhibit: 5.2.4 ("Individual Authorization") and 5.2.7 ("Pilot Activities").

4.3. **Limitations on use** Pursuant to the Data Sharing Agreement, PO is under restrictions to maintain confidentiality with respect to third parties, employees, and consultants. PO must provide a copy of written confidentiality agreements referenced here upon the request of HIN.

4.4. **Related Use Case Requirements**In addition to the Use Cases required under the Terms, PO must enter into the following Use Cases: Health Provider Directory (HPD), Active Care Relationship Service (ACRS).

5. **Service Interruptions.** No service interruption variations.

6. **Responsibilities of the Parties.**

6.1. PO Responsibilities

6.1.1. Message Content may be updated from time to time as a result of ongoing de-duplication and data cleansing activities. (i) PO and PO Participants shall subscribe to HIN's CKS change notification service to be aware of these changes. PO and PO Participants shall propagate changes to Message Content throughout their Participant Source System(s) as necessary for the success of this Use Case. (ii) If PO or PO Participants determine that one individual has different HIN Common Keys in multiple records, PO must notify HIN. (iii) If PO or PO Participants determine that multiple individuals have the same HIN Common Key, PO must notify HIN.

6.1.2. PO and all PO Participants using Message Content must at all times fully comply with this UCE and the UCIG and all restrictions on how Message Content can or cannot be used.

6.1.3. PO and all PO Participants must never use Message Content alone for matching. Message Content shall always be used in conjunction with additional identifying information as specified in the UCIG when matching.

6.2. HIN Responsibilities

6.2.1. HIN is responsible for creating, assigning, maintaining, and communicating MessageContent.

7. Other Terms.

7.1. **PO Contacts** PO shall provide to HIN the appropriate contact information for this Use Case.

7.2. HIN is not liable to PO for any claims arising from PO's use of Message Content in a manner that is not fully compliant with this UCE and the UCIG.

7.3. PO is not liable to HIN for any claims arising from HIN's use of Message Content in a manner that is not fully compliant with this UCE and the UCIG.

7.4. The Parties agree that a HIN Common Key is PII and is an identifier of an individual under 45 CFR 164.514(b)(2)(i) that the Parties will treat in accordance with HIPAA.

8. Use Case Implementation Guide(s). The Use Case Implementation Guide(s) for this Use Case are available at: <https://mihin.org/implementation-guides/>.

USE CASE EXHIBIT

Use Case Name: Active Care Relationship Service

This Use Case Exhibit (“UCE”) is effective and binding upon PO and subject to the Terms. HIN and PO are referred to herein collectively as “Parties” and individually as a “Party.”

1. Purpose. The purpose of this UCE is to define PO and HIN roles and responsibilities as they relate to supplying and maintaining the data in the Active Care Relationship Service. HIN maintains data which attributes patients to Health Providers who are authorized to provide care and Health Plans who are authorized to reimburse for care within a PO Participant. The Message Content for this UCE enables HIN to provide a service identifying Health Providers and PO Participants who may use message content within other use cases or scenarios such as those related to transitions of care and care coordination, including but not limited to ADT Notification Service, Statewide Lab Orders-Results scenario, and Medication Reconciliation. This also involves sharing data with other infrastructure use cases including but not limited to the Health Provider Directory (HPD) and the Statewide Consumer Directory (SCD).

2. [RESERVED]

3. Definitions. Capitalized terms used herein and not otherwise defined, shall have the meaning given them in the Terms.

3.1. **Transactional Basis** means:

3.1.1. For Scenario A where PO or PO Participant is sending ACR records either as transactions or as files, the ACR record for each patient shall be updated no less than monthly.

3.1.2. For Scenario B where HIN is creating ACR records based on receipt of message content from other Use Cases, HIN shall create the new ACR records in near real-time of receipt of message content or notice from a sending, receiving, or finding party.

3.2. **Message Content** means transactions or files containing Active Care Relationship (ACR) records that fully conform to the UCIG for this UCE. Message Content for this UCE must be accompanied by files or transactions containing Provider Information as required by the HPD UCE.

4. Use Case Details.

4.1. Primary Use

4.1.1. Message Content and related Notices are used to populate and maintain up-to-date Active Care Relationships in HIN Infrastructure Service called ACRS for the purpose of identifying Active Care Team members that may receive message content from other Use Cases.

4.1.2. PO will send Message Content about patients and their attributed Active Care Team members in the format specified in this Use Case Implementation Guide referenced below. The Message Content will be used in multiple Use Cases to send message content from other Use Cases as defined by each Use Case.

4.1.3. Message Content may be used such as for resolution of patient matching in support of other HIN Infrastructure Services including but not limited to a common key service working in conjunction with the Active Care Relationship Service and the MDHHS Master Person Index.

4.1.4. HIN may use message content received from other Use Cases to create new Message Content that is subject to this UCE.

4.1.5. HIN may use Message Content to create reports or extracts from Message Content for a TDSO to support that TDSO's business requirements related to its Active Care Relationships.

4.1.6. PO and authorized PO Participants may find (query) ACRS for Message Content and use Message Content but PO or PO Participants shall not redistribute or make public Message Content to any third party unless such third party has agreed that they will not store or persist the Message Content nor will they make the Message Content available to any party other than PO or PO Participants. Permissible use of Message Content includes showing Message Content to the patient or Active Care Team members contained in the Message Content on an individual basis. This may require use of the Common Key Service (CKS) Use Case.

4.1.7. Message Content may be used by PO, HIN, or TDSOs to track visit history.

4.1.8. Message Content may be used by HIN to add intelligence to finding (querying) Patient Data by informing a record locator service to enable efficient search.

4.2. Additional Permissible Use

4.2.1. Message Content may be used to notify eligible patients or guardians.

4.2.2. The following sections of the Terms are not permissible uses under this Exhibit: 5.2.7 ("Pilot Activities").

4.3. Limitations on use No additional limitations.

4.4. Related Use Case RequirementsIn addition to the Use Cases required under the Terms, PO must enter into the following Use Cases: Health Provider Directory (HPD).

5. Service Interruptions. No service interruption variations.

6. Responsibilities of the Parties.

6.1. PO's Responsibilities

6.1.1. PO shall ensure that Message Content is properly encoded and can be properly parsed. In particular, accompanying information about the Health Provider must be valid.

6.1.2. PO shall send the Message Content using a secure transport method, format and content approved by HIN.

6.1.3 If the Message Content sent from PO to HIN is not received successfully in full, HIN shall send a Notice to PO and within a reasonable period after receiving the failure Notice the PO shall resend or make provisions to have the Message Content sent to HIN again until it is successfully received by HIN.

6.1.4 If PO does not meet all of its responsibilities in this section 6.1 the ability to receive message content for all use cases that utilize ACRS will be negatively impacted.

6.1.5 PO and PO Participants are responsible for affirming that a DECLARED ACR exists and that the criteria for asserting that an ACR exists are valid.

6.1.6 PO must inform HIN if it discovers any ACR is in error, such as by receiving message content for any individual under any Use Case for which PO does not have a valid ACR for that individual.

6.1.7 For a CONTESTED ACR, PO must review the CONTESTED ACR and respond to HIN within 14 days as to whether the ACR should become an EXPIRED ACR or a CONFIRMED ACR.

6.2 HIN's Responsibilities

6.2.1 HIN shall be responsible for successfully loading Message Content into the HIN Infrastructure Service on a predetermined schedule and notifying PO of any errors.

6.2.2 HIN shall keep record of changes made as a result of new Message Content provided by PO.

6.2.3 HIN shall provide a list of the ACRs for PO and/or PO Participants upon request and PO agreement in writing to pay a reasonable fee to cover HIN costs.

6.2.4 HIN shall flag and track any CONTESTED ACR in ACRS.

6.2.5 HIN shall send any CONTESTED ACR that involves a TDSO to the TDSO. When a CONTESTED ACR becomes a CONFIRMED ACR HIN shall communicate to the same TDSO(s) that any CONTESTED ACR has become a CONFIRMED ACR.

6.2.6 When an ACR Type changes, HIN shall archive effective dates/periods for previous ACR Types. This includes archiving all every new ACR when it is created no matter what the type, and archiving the date that every ACR EXPIRED type occurs.

7. Other Terms.

7.1 PO Contacts PO shall provide to HIN the appropriate contact information for this Use Case.

8. Use Case Implementation Guide(s). The Use Case Implementation Guide(s) for this Use Case are available at: <https://mihin.org/implementation-guides/>.

Addendum 3

Master Services Agreement (MSA)

This Master Services Agreement (“MSA”) is made under Terms and subject to the Standard Terms and Conditions at **Attachment A**. This MSA is entered into between the party accepting the Terms (“Client”) and Michigan Health Information Network Shared Services (“MiHIN” or “Contractor”), and governs the Statements of Work (SOWs) related to Product(s) and/or Use Case(s) identified therein at **Attachment B**. Contractor and Client may be referred to in this MSA, individually, as a “party” or, collectively, as the “parties.”

1.0 Scope. Contractor has defined and will deliver to Client the deliverables (“Deliverables”) as set forth in **Attachment B**. Other tasks may be subsequently added to this MSA, subject to being mutually agreed upon in writing including the following:

- (1) Description of added scope and/or deliverables
- (2) Updated schedule, if any
- (3) Updated costs, if any
- (4) Acceptance of any other measurable impact on Deliverables

2.0 Term. This MSA shall remain in effect concurrent with the Terms.

3.0 Fees and Invoices. Fees are as set forth in **Attachment B** with invoices sent to Client’s email address provided hereinbelow. Terms of payment are as set forth in the Standard Terms and Conditions.

Standard Terms and Conditions - SOWs

1. Client Responsibilities. Client must furnish a sufficient number of trained and experienced personnel and deliver all necessary information and materials in a timely fashion. Contractor will not be responsible for any delays, cost overruns, or liability resulting from the foregoing factors. To facilitate prompt and efficient completion of the work, Client and its personnel shall cooperate fully with Contractor and its personnel in all respects, including, without limitation, providing information as to Client requirements, providing access to the facilities and equipment/hardware on which the Deliverables are to be installed, and providing access to all necessary information regarding Client's systems and facilities. Client will be responsible for making, at its own expense, any changes or additions to Client's current systems, software, and hardware that may be required to support operation of the Deliverables. Client is solely responsible for backing up all computer and electronic data prior to any Services being performed under this Agreement. Contractor will not be responsible for any lost or damaged data resulting from the Services.

2. Fees, Expenses, and Payment.

Fees; Taxes. In consideration of the Services to be performed by Contractor, Client will pay Contractor the fees provided in the SOW. Contractor may suspend performance of the Services if Client fails to timely pay Contractor as required under this Agreement. Any failure to pay will constitute a material breach of this Agreement by Client. Client will pay or reimburse Contractor for all sales, use, transfer, privilege, tariffs, excise, and all other taxes and all duties, whether international, national, state, or local, however designated, which are levied or imposed by reason of the performance of the Services and provision of the Deliverables under this Agreement; excluding, however, income taxes based on Contractor net revenue. Unless otherwise provided in this Agreement or in one of its Exhibits, or in a SOW, payment for all other services rendered by Contractor shall be at Contractor's then current time and materials rates.

Expenses. Client will reimburse Contractor for special or unusual expenses incurred at Client's specific request. Contractor will not be responsible for delays caused in seeking and obtaining Client's approval of expenses.

Payment of Invoices. Invoices are due and payable upon receipt. Payments not made promptly will be subject to late charges equal to the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. In addition, Client shall reimburse Contractor for its reasonable costs and expenses of collection, including attorneys' fees and costs.

3. Termination. This SOW may be terminated by either party upon written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice. Client will pay Contractor for all services rendered and work performed up to the date of termination. In addition, Contractor will be paid at its then current hourly rates for time spent and materials expended through the date of termination on any uncompleted work and services, regardless of whether such work, services and materials have been previously invoiced. Contractor will provide Client with an invoice for the foregoing fees within sixty (60) days of the effective date of the termination. Client will pay the invoice upon receipt. The following provisions will survive termination or expiration of this SOW: Sections 2 (Fees, Expenses, Payment), 3 (Termination), 4 (Intellectual Property), 5 (Disclaimer of Warranties), and 7 (Limitation of Liability).

4. Intellectual Property. This is not a work made-for-hire agreement (as that term is defined in Section 101 of Title 17 of the United States Code). Contractor is the owner of all rights, including intellectual property rights, in and to the Products, Services and Deliverables, including any enhancements or modifications. On payment in full of all fees due under the relevant Statement of Work, Client will have non-exclusive, non-transferable, access to use the Products, Services and Deliverables solely for Client's use consistent with this SOW. Client may not under any circumstances separately use or exploit the Products, Services and Deliverables for any other purposes.

5. Limited Warranties. Contractor warrants that for a period of thirty (30) days from initial delivery, the Deliverables will operate in substantial conformance with the specifications in the SOW, if any. All warranty claims not made in writing within such period shall be deemed waived. As the sole and exclusive remedy of Client for breach of the foregoing warranty, Contractor shall, at its option, either correct the nonconformity or refund to Client the fees paid in connection with the relevant Deliverables. The warranties provided in this Section are solely for the benefit of Client and Client will have no authority to extend such warranties to any third party.

6. Disclaimer of Warranties. EXCEPT AS PROVIDED IN SECTION 5 (LIMITED WARRANTIES), THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. EXCEPT AS PROVIDED IN SECTION (LIMITED WARRANTIES), CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT EXPRESSLY AGREES AND ACKNOWLEDGES THAT USE OF THE SERVICES AND DELIVERABLES IS AT CLIENT'S SOLE RISK. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES AND DELIVERABLES WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE DELIVERABLES ARE COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE PLATFORM, OR THAT THE OPERATION OF THE DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE DELIVERABLES WILL BE CORRECTED. FURTHERMORE, CONTRACTOR DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE DELIVERABLES IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, SECURITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, CURRENTNESS, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CONTRACTOR OR CONTRACTOR'S AUTHORIZED REPRESENTATIVES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

7. Limitation of Liability. NEITHER CONTRACTOR NOR ITS SUPPLIERS, VENDORS AND LICENSORS SHALL HAVE ANY LIABILITY TO CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING USE OF THE SERVICES OR DELIVERABLES EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF CONTRACTOR AND ITS SUPPLIERS, VENDORS AND LICENSORS TO CLIENT OR ANY THIRD PARTY ARISING OUT OF THIS

AGREEMENT OR USE OF THE SERVICES OR DELIVERABLES IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE (WHETHER IN CONTRACT OR TORT) SHALL NOT EXCEED THE TOTAL FEES PAID HEREUNDER BY CLIENT UNDER THE STATEMENT OF WORK AS TO WHICH THE LIABILITY ARISES DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

THE LIMITATION OF LIABILITY AND TYPES OF DAMAGES STATED IN THIS AGREEMENT ARE INTENDED BY THE PARTIES TO APPLY REGARDLESS OF THE FORM OF LAWSUIT OR CLAIM A PARTY MAY BRING, WHETHER IN TORT, CONTRACT OR OTHERWISE. THE LIMITATIONS OF LIABILITY AND DISCLAIMERS OF WARRANTIES PROVIDED IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL CONTINUE TO APPLY EVEN IF ANY EXCLUSIVE REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE.