

## MASTER SERVICES AGREEMENT

This Master Services Agreement (the “Agreement”), dated as of \_\_\_\_\_, 2026 (the “Effective Date”), is made by and between \_\_\_\_\_, a \_\_\_\_\_ company with a principal place of business located at \_\_\_\_\_ (“Contractor”), and **CRISP DC**, a District of Columbia 501(c)(3) corporation with a principal place of business at 800 Maine Ave SW 2nd floor, Washington, DC 20024 (“CRISP DC”). Contractor and CRISP DC are each a “Party” and, collectively, the “Parties”.

**WHEREAS**, CRISP DC is the District-Designated Health Information Exchange (“HIE”) for the District of Columbia that enables and supports the healthcare community of DC and its region to share data appropriately and securely in order to facilitate care, reduce costs, and improve health outcomes;

**WHEREAS**, CRISP DC was awarded a grant (“Grant”) with the DC Department of Health Care Finance (“DHCF”) to support bed availability and referral capabilities across the District of Columbia and Subcontractor will perform certain services or subtasks related to the Grant (“Grant”).

**NOW, THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. **Contractor Services and Deliverable Monitoring.**

- a. Contractor hereby grants to CRISP DC a limited, non-exclusive, non-sublicensable, non-transferable license to use the Software, as defined in *Exhibit A*, during the Term, for the uses and users described in *Exhibit A*.
- b. Contractor agrees to provide the services, if any, as set forth in each specific Statement of Work that is mutually agreed to by the Parties (“SOW”) (the “Services”). Each SOW, upon signature by the Parties, shall be incorporated into and made a part of this Agreement. In the event of any conflict between this Agreement and any SOW, the terms and conditions of the SOW shall control.
- c. CRISP DC reserves the right to conduct an acceptance test (the “Acceptance Test”) of the deliverables provided under any SOW (the “Deliverable(s)”) before accepting such Deliverables. In event that CRISP DC elects to conduct an Acceptance Test, CRISP DC will test the functionality of the Deliverables against any agreed upon specifications as set forth in the applicable SOW (the “Specifications”). CRISP DC shall have thirty (30) days following delivery of the Deliverables to conduct the Acceptance Test (the “Acceptance Period”). Any failure of the Deliverables to conform in all material respects to the Specifications will be considered an “Deficiency”. CRISP DC will notify Contractor of any Deficiencies at the completion of the Acceptance Test and shall give Contractor twenty (20) days to cure the Deficiencies. CRISP DC will then have an additional ten (10) days to retest the Deliverable(s) and determine whether to accept or reject it. If the Deliverable(s) are rejected, Contractor will refund all monies pre-paid to it by CRISP DC under the applicable SOW and will not be entitled to any additional monies related to the rejected Deliverable(s). Unless Contractor is notified within thirty (30) days of the initial delivery date of any Deliverable(s) of a Deficiency, the Deliverable(s) will be deemed to be accepted.
- d. During the course of Contractor’s performance hereunder, CRISP DC may request changes in the Services, including, without limitation, alterations or additions to or

omissions from the Services set forth in a SOW (hereinafter collectively “Changes”). Material Changes may result in increased time and /or cost. Any Changes must be mutually agreed to by both Parties and signed by duly authorized representatives.

## 2. **Fees.**

- a. CRISP DC shall pay to Contractor the fees pursuant to the terms contained Exhibit A and in each applicable SOW, as applicable.
- b. Contractor understands that this Agreement is based upon CRISP DC’s contract with the District of Columbia. CRISP DC will make payments to Contractor within sixty (60) days of CRISP DC receiving payment related to the Services from the District of Columbia. If at any time during the Term the funding to CRISP DC from the District of Columbia is revoked, CRISP DC will provide Contractor thirty (30) days written notice of its termination of this Agreement (such thirtieth day to be known as the “Revocation Termination Date”) and subsequent, pending Services shall terminate on the Revocation Termination Date. CRISP DC will be responsible only for payments for Services completed prior to the Revocation Termination Date, according the applicable SOW.

## 3. **Warranties.**

- a. Each Party represents and warrants that it has full right, power and authority to enter into this Agreement and to perform its obligations and duties under this Agreement, and that the performance of such obligations and duties does not and will not conflict with or result in a breach of any other agreements of such Party. Each Party represents and warrants to the other Party that it will comply with all applicable laws regarding its performance of its obligations under this Agreement.
- b. Contractor shall use reasonable efforts to ensure that the Services will be performed by appropriately trained and qualified personnel using reasonable skill and diligence.
- c. Contractor represents and warrants that: (i) it has the right, power and authority to grant the Software license to CRISP DC pursuant to this Agreement free of all liens, encumbrances and other restrictions; (ii) the Software shall operate and run in accordance with the specifications in Exhibit A; (iii) to the reasonable knowledge of Contractor, the license furnished hereunder and/or the use of the Software by Contractor in accordance with the terms and conditions herein, including Exhibit A, will not infringe upon nor violate any patent, copyright, trade secret, or other proprietary right of any third party; and (iv) CRISP DC’s use and possession of the Software consistent with the terms of this Agreement, shall not be adversely affected, interrupted, or disturbed by Contractor or any entity asserting a claim under or through Contractor.

## 4. **Ownership and Title.**

- a. Unless the Parties specifically contract for net new Services in an applicable SOW (in which case, the intellectual property rights related to such net new services shall be set forth therein), all information, data, software, and materials provided or made accessible by or on behalf of either Party shall be and remain at all times the property of that Party and the other Party shall not claim any right or title

thereto.

- b. During the course of performing the SOWs, Contractor may, independently or in conjunction with CRISP DC, or other third parties engaged by the CRISP DC, develop, create or generate in whole or in part, information, documents, databases, computer software and object/source code, technical data, drawings, discoveries, templates, designs, documentation, specifications, diagrams, communications and other work product and deliverables and achieve other results for the other Party in connection with the services it performs for or at the direction of CRISP DC (the “Work Product”). Unless otherwise mutually agreed by the Parties under the relevant SOW, the Work Product will be “open source.” In the event the SOW specifies the Work Product is not open source, the Contractor will grant CRISP DC a perpetual, royalty free, irrevocable, world-wide right and license to use the Work Product, including all intellectual property embodied therein, which right and license may be sublicensed or assigned by either Party.
- c. At CRISP DC’s request from time-to-time during the term of this Agreement, and with request on termination of this Agreement, the Contractor shall promptly deliver to CRISP DC a copy of all printed, electronic, audio-visual and other tangible manifestations of the Work Product, including a complete copy of the source code for all software developed pursuant to this Agreement, including, without limitation, all application programming interfaces (“APIs”), any related modules, customizations, enhancements and other modifications, in the original programming language, human and machine-readable form, together with user instructions, programming notes, specifications and other information and materials, in such a form and with sufficient interpretive material to enable a reasonably skilled programmer to maintain and support the Work Product.

5. **Confidential Information.** Each Party hereby acknowledges that it may be exposed to confidential and proprietary information of the other Party including, without limitation, technical information, functional and technical specifications, designs, drawings analysis, research, processes, computer programs, methods, ideas, “know how,” business information such as sales and marketing research, materials, plans, accounting and financial information, personnel records, and other information designated as confidential expressly or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (“Confidential Information”). Confidential Information does not include (i) information already known or independently developed by the recipient without use of or access to the Confidential Information; (ii) information in the public domain through no wrongful act of the recipient, or (iii) information received by the recipient from a third party free to disclose the information. With respect to the other Party’s Confidential Information, the Parties hereby agree, during the Term and at all times thereafter, not to other than as contemplated hereby, (i) use, (ii) commercialize or (iii) disclose such Confidential Information to any third party without the other Party’s prior written approval. Neither a Party nor the representatives of such Party may alter or remove, from any documentation or material owned or provided by the other Party, any proprietary, copyright, trademark, trade secret, or other proprietary legend. Each Party will use at least the same degree of care in safeguarding the other Party’s Confidential Information as it uses in safeguarding its own Confidential Information but, in any event, no less than that which is reasonable. The Parties acknowledge that violation by either Party of this Section 6 of the Agreement may cause irreparable harm to the other Party that would not be adequately compensable by monetary damages. In addition to any other right or remedy available under this Agreement, at law, or in equity, it is

agreed that injunctive relief will be available to prevent any actual or threatened violation of this Section 6.

## **6. Term, Termination and Effect of Termination.**

- a. The term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with this Section, continue until one (1) year from the Effective Date (the “Initial Term”). Following the expiration of the Initial Term, this Agreement shall renew for successive one (1) year periods (each, a “Renewal Term” and, together with the Initial Term, the “Term”) if the Parties mutually agree in writing to renew no less than thirty (30) days prior to the applicable anniversary of the Effective Date.
- b. Either Party may terminate this Agreement at any time in the event of a material breach by the other Party, provided that the terminating Party provides written notice of the material breach and the breach remains uncured after thirty (30) days written notice thereof.
- c. If Contractor, or a significant portion thereof, is sold or merges or undergoes a change of control transaction prior to the end of the Term, CRISP DC may terminate this Agreement as of the date of completion of the transaction.

## **7. Indemnity.**

- a. Each Party shall indemnify, defend and hold harmless the other Party (including all of its affiliates, officers, directors, employees and agents) from and against any and all damages, costs, losses, liabilities, claims, legal actions and demands (including reasonable attorney’s fees, costs, expenses, expert witness fees and cost of investigation, litigation or dispute resolution on account thereof) resulting from third party claims (or any settlement in favor of such third party resulting from such third party’s claims) (a) resulting from the indemnifying Party’s breach of this Agreement; (b) resulting from a violation by the indemnifying Party of applicable law; or (c) alleging that any of the materials provided by the indemnifying Party infringes or violates any (i) patent issued in the United States or European Union, (ii) copyright, or (iii) trade secret; but neither Party shall be required to indemnify the other for any of the other Party’s loss of profits and/or revenues resulting from such suit or proceeding.
- b. The Party claiming indemnification must give the indemnifying Party prompt written notice of any claim under this paragraph (provided, that failure of the indemnified Party to notify the indemnifying Party of any such claim shall not relieve the indemnifying Party of its indemnification obligations except to the extent such failure adversely impacts the ability of the indemnifying Party to successfully defend against such claim).
- c. The indemnifying Party has the right to assume the defense of such claim and select counsel reasonably acceptable to the indemnified party.
- d. The indemnified Party must cooperate with the indemnifying Party in all reasonable respects in connection with the investigation and defense of any such claim (at the indemnifying Party’s expense); and

- e. The indemnifying Party has the right to consent to the entry of judgment with respect to, or otherwise fully and finally settle such claim on notice to the indemnified party, such consent not to be unreasonably withheld. No withholding of such consent by the indemnified Party shall be deemed unreasonable if such settlement involves any remedy aside from immediate payment of money or does not include a full and unconditional release of the Indemnified Party from any and all liability.

8. **Limitations of Liability and Remedies.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOST DATA OR LOST PROFITS, OR COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The entire liability of either Party under this Agreement shall be limited to the total of all fees and expenses actually paid under or in connection with this Agreement and all SOWs. The Parties agree that breach of any of the provisions of this Agreement may cause irreparable harm to either Party which would not be adequately compensated by money damages alone. Without limiting the remedies available to either Party under this Agreement, at law, or in equity, each Party shall be entitled to seek injunctive relief to enforce the terms of this Agreement.

9. **Insurance.** Contractor shall effect and maintain the following insurance with respect to the Services, copies of which shall be provided upon request:

- a. Worker's Compensation Insurance covering all of Contractor employees providing Services to the extent required by law; and
- b. General Comprehensive Liability Insurance, with a minimum limit of \$1,000,000 per occurrence, and \$5,000,000 in the aggregate.
- c. If the foregoing coverages are provided on a claims-made basis upon the termination or expiration of this Agreement, or the expiration or cancellation of the insurance, Contractor will: (i) renew the existing coverage, maintaining the expiring policy's retroactive date; or (ii) purchase either an extended reporting endorsement from the prior insurer, or "Prior Acts" coverage from the subsequent insurer, with a retroactive date on or prior to the Effective Date and, in either event, for a period of three (3) years following the termination or expiration of this Agreement.

10. **Compliance with Laws and Regulations.** Each Party shall ensure that it complies with the applicable local, state and federal laws and regulations in performing its obligations hereunder. The Parties represent and warrant that neither it nor any employee or contractor furnished by it for Services is (i) currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal Health Care Programs"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Health Care Programs; and (iii) under investigation or otherwise aware of any circumstances which may result in a Party being excluded from participation in the Federal Health Care Programs. The Parties will immediately notify the other Party of any change in the status of the representation and warranty set forth in this Section. Any breach of this Section shall give the non-breaching Party the right to terminate this Agreement immediately for cause.

11. **Security.** Contractor agrees to comply with all CRISP DC's internal privacy and security rules and procedures, including (1) entering into a HIPAA Contractor Business Associate Agreement in Appendix B; (2) providing annual security audit reports (e.g., SOC-2, HITRUST) to CRISP DC; (3) completing an annual security questionnaire; and (4) complying with the requirements on [www.crispshareservices.org/docs-9fd73a1-security-addendum/](http://www.crispshareservices.org/docs-9fd73a1-security-addendum/). From time-to-time, CRISP DC may issue additional or updated security requirements by posting them on <https://www.crispshareservices.org/docs-9fd73a1-security-addendum/> (the "Security Requirements"). Contractor must be in compliance with the Security Requirements, to the extent applicable, within sixty (60) days of their posting or updating ("Deadline").

- a. If Contractor is unable to comply with one or more of the Security Requirements, it must submit a corrective action plan on or before the Deadline to the contact listed on the Security Requirements website. The corrective action plan must list the individual requirements with which Contractor cannot comply, a timeline for compliance, and the steps it is taking to comply ("Corrective Action Plan").
- b. CRISP DC may reject or ask for a modification of the Corrective Action Plan within thirty (30) days of receipt. If CRISP DC does not reject or ask for modification of the Corrective Action Plan within thirty (30) days of receipt, it is deemed accepted. CRISP DC may ask for regular updates on the Corrective Action Plan that Contractor must submit within a reasonable period of time.
- c. The Security Requirements shall remain in effect until the later of the termination of the Agreement or until Contractor has certified to the satisfaction of CRISP DC that all CRISP DC Data have been destroyed or returned to CRISP DC according to industry recognized standards such as NIST-SP 800-88, DoD 5220-22M, or SEAP 8100/8200.
- d. Contractor will make security information available to CRISP DC that CRISP DC may need to satisfy its security obligations under grants or contracts. CRISP DC will have the right to audit Contractor at any time to ensure compliance with this Section.

12. **Disclosure of Records.** To the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Contractor shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing Services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such Services. This Section is included pursuant to and is governed by the requirements to 42 U.S.C. § 1395x(v)(1) and the regulations thereto.

13. **General.**

- a. **Survival.** The only provisions of this Agreement that will survive the termination or expiration of this Agreement are those provisions that are necessary to survive in order to give such Sections the full and intended meaning, and such Sections shall survive only to the extent and duration necessary to give such Sections their intended meaning and affect.
- b. **Assignment.** Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.
- c. **Choice of Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia without regard to its conflict of



laws principles. The Parties agree that this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Any suit or other legal action respecting this Agreement shall be brought exclusively in the state or federal courts of the District of Columbia, and the parties submit to the exclusive jurisdiction of such courts for all purposes.

- d. **Severability.** All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case Contractor and CRISP DC agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.
- e. **Independent Contractors.** The parties hereunder are independent contractors. Neither party shall have any right to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other party. This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership or other form of a business organization or agency relationship.
- f. **Entire Agreement.** This Agreement constitutes the entire Agreement between CRISP DC and Contractor with respect to the subject matter hereof, and no waiver, modification, alteration or amendment of any of the terms or conditions hereof shall be effective unless and until set forth in a writing duly signed by an officer of Contractor and by CRISP DC.
- g. **Force Majeure.** Neither Party shall be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond that party's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes, or governmental acts.
- h. **Notices.** Any notice or other communication under this Agreement given by any party to any other party will be in English, in writing and will be deemed properly given when sent to the intended recipient by certified letter, receipted commercial courier or electronically receipted facsimile or e-mail transmission (acknowledged in like manner by the intended recipient) to. Any Party may from time to time change such address or individual by giving the other party notice of such change in accordance with this Section.
- i. **Days.** Any references in this Agreement to "days" shall mean calendar days unless expressly provided otherwise.

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IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its respective duly authorized representative as of the Effective Date.

*[CONTRACTOR]*

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 202\_

Email: \_\_\_\_\_

*CRISP DC, Inc.*

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 202\_

Email: \_\_\_\_\_



Exhibit A

**Software, including specifications:**

**Uses of Software:**

**Users:** CRISP DC, including CRISP DC’s Participant Users. Participant Users are those entities who have signed a valid contract with CRISP DC to use the HIE services.

**Service Level Agreements:**

**Invoicing Procedures**

Bill to Address	Client Project Manager
CRISP DC PO Box 1152 Columbia, MD 21044-9997 ap@crisphealth.org	[XXX]

## SOW

1. **Project Name:**
2. **Overall Objective and Background:**
3. **Term:**
4. **Key Contacts:**
  - a. **Project Lead(s)**
  - b. **Other Individuals Responsible for SOW, including their Role(s) and Responsibility(ies)**
5. **Deliverables and Project Plan:**
6. **Level of Effort:**

**[Include Dollar Ceiling / Not to Exceed Amount]**

### Invoicing Procedures

Bill to Address	Client Project Manager
CRISP PO Box 1152 Columbia, MD 21044-9997 ap@crisphealth.org	[XXX]

FOR CRISP DC:

ACCEPTED BY:

Please Print \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

FOR \_\_\_\_\_:

ACCEPTED BY:

Please Print \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Business Associate Agreement

### CONTRACTOR BUSINESS ASSOCIATE AGREEMENT

This Contractor Business Associate Agreement (“Agreement”) is entered into \_\_\_\_\_ (“Contractor”) and CRISP DC, Inc. (“Business Associate”) and is effective as set forth in Section 6 (a) below.

### *RECITALS*

A. Business Associate provides services to Covered Entities in Business Associate’s capacity as a Health Information Exchange in accordance with each CRISP DC Participation Agreement (“Business Agreement”).

B. Under the Business Agreement, Covered Entities may disclose information to Business Associate which constitutes Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996, including the Privacy Rule and the Security Standards, as amended by the Health Information Technology for Economic Clinical Health Act of 2009 “the HITECH Act” and its implementing Regulations and Guidance (collectively, “HIPAA”).

C. Contractor provides professional and software services to Business Associate under the terms of Master Service Agreement (“Services Agreement”). Those services involve Contractor’s performance of functions, activities or services involving access to Protected Health Information of Covered Entities.

D. The purpose of this Agreement is to satisfy the requirements of HIPAA that Contractor provide satisfactory written assurances to Business Associate that it will comply with the applicable requirements of HIPAA.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. Definitions. Unless otherwise defined in this Agreement, including the definitions stated in the Recitals, which are incorporated into this Section 1 by reference, capitalized terms have the meanings ascribed to them under HIPAA for purposes of this Contractor Business Associate Agreement.

a. Breach. “Breach” means the unauthorized acquisition, access, use, or disclosure of Unsecured Protected Health Information which compromises the security or privacy of such information, subject for reporting purposes to the statutory exceptions specified at Section 13400 of the HITECH Act and to the regulatory exclusions specified at 45 C.F.R. §164.402 and any future amendments thereto.

b. Guidance. “Guidance” shall mean official guidance of the Secretary as specified in the HITECH Act and any other official guidance or interpretation of HIPAA by a federal governmental agency with jurisdiction.

c. Designated Record Set. “Designated Record Set” shall mean a group of records maintained by or for a Covered Entity that are (i) the medical records and billing records about Individuals maintained by, or for a covered Health Care Provider; (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 the Covered Entity to make decisions about Individuals. For purposes of this definition, the term record means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity.

d. HIPAA Regulations or Regulations. References to “HIPAA Regulations” or “Regulations” shall mean the Privacy Rule and the Security Standards, as amended by Regulations commonly referred to as the HITECH Modifications to the HIPAA Privacy, Security Enforcement and Breach Notification Regulations

e. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E, as amended by the HITECH Act, as may be implemented by HIPAA Regulations and Guidance.

f. Protected Health Information or PHI and ePHI. “Protected Health Information” and “PHI” shall have the same meaning as the term “protected health information” in HIPAA and shall include ePHI. Specific references to “ePHI” shall be deemed to refer only to PHI in electronic form. All references to PHI or ePHI in this Agreement shall refer only to PHI or ePHI of Covered Entities created, received, maintained or transmitted by Contractor under the Services Agreement on behalf of Business Associate as authorized under each Business Agreement unless specifically stated otherwise. Protected Health Information includes Genetic Information.

g. Security Incident. “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.

h. Security Standards. “Security Standards” shall mean the Security Standards at 45 CFR parts 160, 162 and 164, as amended by the HITECH Act and as may be implemented by HIPAA Regulations and Guidance.

i. Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

j. Contractor. “Contractor” shall mean a person or entity to which Contractor further delegates a function, activity or service involving access to PHI or ePHI of Covered Entities, other than as a member of Contractor’s Work Force. References to a “Second Tier” Contractor shall mean a person or entity to which Contractor further delegates such a function, activity or service.

k. Unsecured. “Unsecured” as applied to Protected Health Information means Protected Health Information in any form, electronic, paper or oral, that is not secured through the use of a technology or methodology specified by the Secretary in HIPAA Regulations and Guidance.

## 2. Obligations and Activities of Contractor as to Protected Health Information.

a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Services Agreement, this Agreement, as Required by Law and to otherwise comply with the provisions of the Privacy Rule and the Security Rule applicable to Contractor. This includes, without limitation, the restrictions on the Sale of PHI and on its Use for Marketing provided in the HITECH Regulations.

b. Contractor agrees to use appropriate safeguards to prevent Use or Disclosure of Protected Health Information other than as provided for in Section 2 a. above. If and to the extent Protected Health Information is disclosed to, accessed, used, maintained, held, or created by Contractor is ePHI, Contractor will comply with the applicable provisions of the Security Standards, including by providing Administrative, Physical, and Technical Safeguards for all ePHI and by developing Policies and Procedures implementing those Safeguards.

c. Contractor agrees to promptly report to Business Associate any use or disclosure of the Protected Health Information not provided for in the Services Agreement and/or this Agreement. Contractor agrees to report to Business Associate any Breach within two (2) business days of the first day the Breach is known, or reasonably should have been known, to the Contractor, including for this purpose known to any employee, officer, or other agent of the Contractor (other than the individual committing the Breach) (“Breach Notice”). The Breach Notice will include the date of the Breach and the date of discovery of the Breach and, to the extent known to Contractor at the time of the Breach Notice in the exercise of reasonable diligence, (i) identification of each Individual whose Unsecured PHI was, or is reasonably believed by the Contractor to have been, subject to the Breach, (ii) the nature of the PHI that was subject to the Breach and (iii) other information required for notification of Individuals of the Breach (“collectively, Breach Information”). Contractor will notify Business Associate in writing, to the extent known to Contractor at the time in the exercise of reasonable diligence of any additional Breach Information not included in the Breach Notice or of the circumstances that prevent Contractor from obtaining such additional information not later than ten (10) days after the Breach Notice was sent by Contractor. Contractor will cooperate with Business Associate in the further investigation of the Breach, as reasonably required or as requested by Business Associate. The steps required of Contractor under this Section 2 c. shall be at Contractor’s expense. If Contractor believes that the facts related to a Breach justify the application of any statutory exceptions specified at Section 13400 of the HITECH Act or the regulatory exclusions specified at 45 C.F.R. §164.402, Contractor shall describe those facts in the Breach Notice and the parties shall thereafter discuss the possible application of an exception or an exclusion, provided that any final decision on the availability of an exclusion or exception will be that of the Business Associate in consultation with the affected Covered Entities.

d. The parties agree that this Section 2 d. satisfies any notices necessary by Contractor to Business Associate of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to Business Associate shall be required. For purposes of this Agreement, such Unsuccessful Security Incidents include, without limitation, activity such as pings and other broadcast attacks on Contractor’s firewall, port scans, unsuccessful log-on attempts, denial of service and any combination of the above, so long as no such Unsuccessful Security Incident results in unauthorized access, use, disclosure, modification or destruction of electronic PHI or interference with information system operations related to the ePHI, provided that, upon written request from Business Associate, Contractor will provide a log or similar documentation of Unsuccessful Security Incidents for the period of time reasonably specified in Business Associate’s request. Successful Security Incidents will be reported to Business Associate within two (2) business days of the date the Successful Security Incident is, or in the exercise of reasonable efforts should have been known, to Contractor. If the Successful Security Incident constitutes a Breach, the parties will proceed as required under this Agreement as to a Breach.

e. Contractor agrees to use reasonable efforts to mitigate, at its expense, any harmful effect that is known to Contractor to result from a use or disclosure of Protected Health Information by Contractor in violation of the requirements of the Services Agreement and/or this Agreement, including without limitation a Breach. Contractor will coordinate any mitigation efforts with Business Associate.

f. Contractor agrees to ensure that any Second Tier Contractor agrees, in a form meeting the requirements of 45 C.F.R. § 164.314, to substantially the same restrictions and obligations that apply through this Agreement to Contractor with respect to such Protected Health Information, including those obligations relating to ePHI. Upon Contractor's knowledge of a pattern of activity or practice of a Second Tier Contractor in violation of the requirements of the foregoing agreement, Contractor will provide notice and an opportunity, not longer than ten (10) business days after the notice, for the Second Tier Contractor to end the violation. Contractor will terminate the agreement with that Second Tier Contractor, at a minimum, as to services of the Second Tier Contractor covered by this Agreement, if the Second Tier Contractor does not end the violation within the time specified by the Contractor.

g. To the extent Contractor maintains a Designated Record Set for the Covered Entities, Contractor make available, within a reasonable amount of time of receipt of an appropriate, written request, Protected Health Information in the Designated Record Set, in accordance with the requirements of HIPAA, including information, if any, maintained in an Electronic Designated Record Set. Contractor will report any request for Access that it receives directly from an Individual to Business Associate within five (5) business days of receipt. The affected Covered Entities, in consultation with Business Associate, will determine any appropriate limitations on such Access and the parties will determine a reasonable method for providing such Access (including, if appropriate for Transmission to a Third Party).

h. To the extent Contractor maintains a Designated Record Set for the Covered Entities, Contractor agrees to make an Amendment, within a reasonable amount of time of receipt of a request, to Protected Health Information in the Designated Record Set, in accordance with the requirements of HIPAA. Contractor will report any request for an Amendment that it receives directly from an Individual to Business Associate within five (5) business days of receipt. The affected Covered Entities, in consultation with Business Associate, will determine any appropriate limitations on such Amendment.

i. Contractor agrees to maintain and make available information required to provide an Accounting of its Disclosures of Protected Health Information required for the Covered Entities to respond to a request by an Individual in accordance with the requirements of HIPAA. At such time as final regulations or Guidance as to Accounting for Disclosures for purposes of Treatment, Payment and Health Care Operations ("TPO Accounting") are published, Business Associate will provide an amendment to this Agreement under Section 7 e. to specify the extent and manner in which such information will be recorded and provided, to be effective as of the date upon which compliance with the TPO Accounting requirements is required by Covered Entities.

j. Subject to receiving notice in accordance with Section 4 b., Contractor agrees to abide by any restriction on the use or disclosure of PHI agreed to by Covered Entities.

k. Upon request, Contractor will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of Covered Entities available to the Secretary for purposes of determining Covered Entities', Business Associate's or Contractor's compliance with HIPAA.



1. To the extent that Contractor will carry out any obligation of Covered Entities under the Security and Privacy provisions set out in Subpart E of 45 CFR Part 164, Contractor will perform such obligations in compliance with the provisions of such Subpart that apply to the Covered Entities as to such obligations.

3. Permitted Uses and Disclosures of Protected Health Information by Contractor. Contractor may Use or Disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Business Associate as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entities. In addition:

a. Except as otherwise limited in this Agreement, Contractor may Disclose Protected Health Information for the proper management and administration of the Contractor, to report violations of the law to law enforcement, or to carry out legal responsibilities of Contractor, provided that Disclosures are Required by Law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and provided further that the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached. For avoidance of doubt, the provisions of Section 2.f. apply to Disclosures to a Second Tier Contractor.

b. Contractor may use Protected Health Information to provide Data Aggregation services to Covered Entities to the extent provided for in the Services Agreement.

c. Contractor agrees that it will not De-identify any PHI to which it has access under the Services Agreement except as for a purpose permitted under the Services Agreement (subject to any approvals required for such use under the Services Agreement ). Without limiting the generality of the foregoing, and regardless of what may be permitted under Applicable Law, Contractor will not manipulate, aggregate, integrate, compile, merge, reorganize, regenerate such PHI, even if De-identified, or derive from such PHI, even if De-identified, any list, compilation, abstraction, or other information to use for a business or other purpose of Contractor that is unrelated to the services Contractor provides under the Services Agreement (“Secondary Use”) or allow access to the PHI or any derivation of it to a third party (even if related to Contractor) for a Secondary Use.

4. Obligations of Business Associate to Inform Contractor of Privacy Practices and Individual Restrictions.

a. Business Associate shall provide Contractor with the Notice of Privacy Practices that Covered Entities produce in accordance with HIPAA as well as any changes to such Notice, to the extent received from a Covered Entity and to the extent that a provision will affect Contractor’s use or disclosure of PHI.

b. Business Associate shall notify Contractor of any Restriction on the Use or Disclosure of Protected Health Information that Covered Entities have agreed to in accordance with the Privacy Rule, to the extent that such restriction will affect Contractor’s Use or Disclosure of Protected Health Information. In order to allow Contractor to comply with such agreed restriction, such notice will be provided as much in advance of the date upon which compliance by the Contractor is required under HIPAA as is reasonable. The foregoing specifically includes an agreement not to disclose an item or service

paid for entirely out-of-pocket by an Individual to a Health Plan for Payment or Health Care Operations (unless such disclosure is Required by Law).

5. Permissible Requests or Disclosures; Minimum Necessary. Except as specifically provided in the Services Agreement or this Agreement, Business Associate shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entities, except as provided in this Agreement for Contractor's Data Aggregation, internal management and administration or legal responsibilities. Without limiting the generality of the foregoing, Business Associate will provide, and Contractor will request, no more than, the Minimum Necessary amount of PHI required for the performance of Contractor's services under the Services Agreement. As of the date upon which compliance is required with Guidance regarding Minimum Necessary, Contractor and Business Associate will comply with such Guidance. To the extent that an amendment to this Agreement is required for such compliance, Business Associate will provide such an amendment in accordance with Section 7.d.

6. Term and Termination

a. Term. This Agreement is effective as of the Effective Date of the Services Agreement. This Agreement shall terminate when the Services Agreement terminates and all of the Protected Health Information provided by Business Associate to Contractor, or created or received by Contractor on behalf of Business Associate, is destroyed or returned to Business Associate, or if it is not feasible to return or destroy Protected Health Information, when protections are extended to such Protected Health Information, in accordance with the provisions of Section 6 c.

b. Termination.

i. Upon one party's knowledge of a material breach by the other party of this Agreement, the parties shall proceed under the termination for cause for material breach provisions of the Services Agreement. Notwithstanding the foregoing, if there is no termination for cause for material breach provision in the Services Agreement, then the non-breaching party shall provide the breaching party with written notice of the material breach which describes the breach in reasonable detail and the breaching party shall have thirty (30) days from receipt of the notice to cure the breach to the reasonable satisfaction of the non-breaching party. If the breaching party has not done so within that period, the non-breaching party may terminate this Agreement for cause effective on further written notice to the breaching party;

ii. Notwithstanding the foregoing, the non-breaching party may immediately terminate this Agreement if the breaching party has breached a material term of this Agreement and the non-breaching party reasonably determines that cure is not feasible.

c. Effect of Termination.

i. Upon termination of this Agreement for any reason, Contractor agrees to return or destroy (in a manner that renders the information Secure) all PHI received from, or accessed, maintained, used, disclosed and/or transmitted for or on behalf of, Business Associate by Contractor. If, or to the extent that, Contractor reasonably determines that the return or destruction of PHI is not feasible, Contractor shall inform Business Associate in writing of the reason thereof, and agrees to extend the protections of this Agreement to such PHI and to limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible until Contractor returns or destroys the PHI.

ii. To the extent the Services Agreement specifically deal with the return or destruction of PHI following termination or expiration of the Services Agreement, the provisions of the Services Agreement shall govern, so long as such provisions are compliant with HIPAA.

7. Miscellaneous

a. Regulatory References. A reference in this Agreement to a provision of the Privacy Rule, the Security Standards, or HIPAA Regulations or Guidance means the referenced material as in effect as of the Effective Date or as subsequently amended or as supplemented or implemented.

b. State Privacy or Security Laws. Contractor will comply with privacy, data security and consumer notification of a breach of personal information laws of the District of Columbia or other states, to the extent relevant under the Services Agreement. In addition, Contractor will comply with applicable restrictions on storage or transmission of PHI by Contractor, as known, or as reasonably should be known, to Contractor.

c. Other Agreements for Services. To the extent that Contractor provides services to Business Associate under agreements other than the Services Agreement, and such services involve Contractor's access to PHI of Covered Entities as a Contractor under HIPAA ("Other Service Agreements"), unless the Other Service Agreement specifically provides otherwise or incorporates another form of Contractor Business Associate Agreement, the provisions of this Agreement shall apply to Contractor under the Other Service Agreement and all references to Services Agreement shall be deemed to refer to the Other Service Agreement.

d. Amendment. The parties agree that in the event that Business Associate reasonably determines that the provisions of this Agreement or of the Service Agreement require amendment based on HIPAA, including but not limited to Guidance or Regulations to be published by the Secretary after the Effective Date of this Agreement or other legislative or regulatory changes to the Privacy Rule or the Security Standards, Business Associate may notify Contractor in writing, including of the text of the proposed amendment, the effective date of the amendment and the basis for the amendment in reasonable detail ("Amendment Notice"), and the relevant agreement will be deemed amended as of the date specified in Amendment Notice unless, within ten (10) days of the receipt of the Amendment Notice, Contractor notifies Business Associate in writing of an objection to the amendment ("Objection Notice"), including the basis for the objection in reasonable detail. In the event an Objection Notice is timely provided, the parties will thereafter promptly discuss the Amendment in an effort to resolve the objection while assuring compliance with HIPAA by both the Business Associate and Contractor as well as the Covered Entities. If the parties are unable to agree on such changes, in writing, within ten (10) days of receipt of the Objection Notice by Business Associate, Business Associate may terminate the Service Agreement without cost or penalty effective on the date on which the proposed amendment was to be effective, as specified in the Amendment Notice. Notwithstanding the foregoing, in the event that Business Associate amends its form of Business Associate Agreement utilized in connection with Business Associate's role in providing a Health Information Exchange ("Standard HIE BAA"), Business Associate may provide an amendment or a new version of this Agreement with conforming changes to those made to the Standard HIE BAA, which amendment or new version shall automatically be effective upon receipt by Contractor.

e. Survival. The respective rights and obligations of the parties under this Agreement which require or contemplate compliance after termination of this Agreement shall survive the termination.

f. Independent Contractor, Not Agent. For purposes of this Agreement and HIPAA, Contractor will be deemed to be an independent contractor, and not an agent, of Business Associate under applicable law, including federal common law.

g. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA, including the Privacy Rule and the Security Standards, as appropriate, consistent with the Services Agreement.

**Business Associate**

**Contractor**

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Signature

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Signature

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Printed Name

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Printed Name

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Title

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Title

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Date

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Date