

## SHI Health Information Exchange General Participation Terms and Conditions

### Section 1 Definitions

For the purposes of these General Terms and Conditions and any Agreement that incorporates by reference these General Terms and Conditions, the following terms shall have the meaning ascribed to them below.

1.1 **"Agreement"** shall mean a Strategic Health Intelligence (SHI) Subscription Agreement for Health Information Exchange (HIE) Services, together with these General Terms and Conditions, which are incorporated into each SHI Subscription Agreement for HIE Services by reference.

1.2 **"Applicable Law"** shall mean all applicable statutes, rules and regulations of Florida, as well as all applicable federal statutes, rules, and regulations.

1.3 **"Breach"** shall mean the unauthorized acquisition, access, disclosure, or use of Health Data. The term "Breach" does not include the following:

1.3.1 any unintentional acquisition, access, disclosure, or use of Health Data through the Network by an employee or individual acting under the authority of Vendor, a Subscribing Participant or Participant User if:

1.3.1.1 such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with Vendor, the Subscribing Participant or Participant User; and

1.3.1.2 such Health Data is not further acquired, accessed, used, or disclosed by such employee or individual; or

1.3.2 any acquisition, access, disclosure or use of information contained in or available through the Subscribing Participant's System where such acquisition, access, disclosure or use was not directly related to transmission of Health Data through the Network.

1.4 **"Business Associate"** shall mean SHI or the Vendor when pursuant to this Agreement:

1.4.1 on behalf of a Covered Entity Subscribing Participant, but other than in the capacity of a member of the workforce of such Covered Entity, performs, or assists in the performance of:

1.4.1.1 a function or activity involving the use or disclosure of PHI, or

1.4.1.2 any other function or activity regulated by the HIPAA Privacy Rule, or

1.4.2 provides, other than in the capacity of a member of the workforce of a Covered Entity Subscribing Participant, consulting, data aggregation (as defined in 45 CFR § 164.501), management, administrative, or other services to or for a Covered Entity Subscribing Participant, where the provision of the service involves the disclosure of PHI from such Covered Entity Subscribing Participant, or from another Business Associate of the Covered Entity Subscribing Participant to the Business Associate.

1.5 “**Common Network Resource**” shall mean software, utilities and automated tools made available for use in connection with the Network.

1.6 “**Covered Entity**” shall mean a Subscribing Participant that is a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR Parts 160, 162, or 164; or a health plan as that term is defined at 45 CFR Part 160.103.

1.7 “**Designated Record Set**” shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

1.8 “**Discloser**” shall mean Vendor or a Subscribing Participant that discloses Proprietary Information to a Receiving Party.

1.9 “**Dispute**” shall mean any controversy, dispute, or disagreement arising out of or relating to this Agreement.

1.10 “**Health Care Operations**” shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

1.11 “**Health Data**” shall mean that information which is requested, disclosed, stored on, made available on, or sent by a Subscribing Participant, Participant User, or Vendor (only for operational purposes) through the Network. This includes, but is not limited to, Protected Health Information (PHI), individually identifiable health information, de-identified data, or limited data sets (as defined in the HIPAA Regulations), pseudonymized data, metadata, and schema.

1.12 “**HHS Secretary**” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

1.13 “**HIPAA Regulations**” shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160, 162 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) of the American Recovery and Reinvestment Act of 2009, as in effect on the date of this Agreement and as may be amended, modified, or renumbered.

1.14 “**HITECH**” shall mean the Health Information Technology for Economic and Clinical Health Act of 2009 (which is part of the American Recovery and Reinvestment Act of 2009 (ARRA)), and any of its implementing regulations.

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

1.16 “**Individually Identifiable Health Information**” shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations.

1.17 “**Minimum Necessary**” shall refer to the standard set forth at 45 CFR § 164.502(b) and 164.514(d) of the HIPAA Regulations.

1.18 “**Network**” shall mean the network operated by Vendor per its agreement with SHI that allows for the exchange of Health Data and/or information between and among Subscribing Participants and Participant Users, as specifically described in this Agreement for:

1.18.1 Direct exchange, as applicable or

1.18.2 Search, retrieval and/or delivery as applicable.

1.19 “**Network Operating Policies**” shall mean the policies and procedures that Subscribing Participant must have in place and the technical requirements that must be met by a Subscribing Participant for participating in the Network and sending and/or receiving Health Data, which are set forth in this Agreement and as are amended from time to time as is necessary to comply with applicable law or system updates.

1.20 “**Notice or Notify**” shall mean a written communication, unless otherwise specified in this Agreement, sent to the appropriate party’s representative in compliance with, and at the address listed in, Article XI of this Agreement.

1.21 “**Participant Users**” shall mean those persons who have been authorized by a Subscribing Participant to access Health Data through the Network and in a manner defined by the respective Subscribing Participant, in compliance with the terms and conditions of this Agreement and Applicable Law. “Participant Users” may include, but are not limited to, health care providers and employees, contractors, or agents of a Subscribing Participant.

1.22 “**Permitted Purposes**” shall mean the reasons for which Health Data may legitimately be exchanged or used on the Network as defined in this Agreement.

1.23 “**Proprietary Information**” for the purposes of this Agreement, shall mean proprietary or confidential materials or information of a Discloser in any medium or format that a

Discloser labels as such or that is commonly understood to be proprietary information. Proprietary Information includes, but is not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, processes and security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Discloser; and (iii) information or reports provided by a Discloser to a Receiving Party pursuant to this Agreement. Notwithstanding any label to the contrary, Proprietary Information does not include Health Data; any information which is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it; is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party's written records; or, is independently developed by Receiving Party without reference to, reliance on, or use of, Discloser's Proprietary Information.

1.24 **“Protected Health Information”** shall have the meaning set forth at 45 CFR § 160.103 of the HIPAA Regulations, and may also be referred to as PHI.

1.25 **“Psychotherapy Notes”** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

1.26 **“Qualified Service Organization”** shall have the same meaning as 42 CFR § 2.11, and may also be referred to as a QSO.

1.27 **“Receiving Party”** shall mean a Subscribing Participant, Participant User, or Vendor that receives Proprietary Information from a Discloser.

1.28 **“Recipient”** shall mean the person(s) or organization(s) that receives Health Data through the Network for a Permitted Purpose. “Recipients” may include, but are not limited to, Subscribing Participants, Participant Users, and Vendor.

1.29 **“Required By Law”** shall have the meaning set forth at 45 CFR § 164.103 of the HIPAA Regulations.

1.30 **“Subscribing Participant”** shall mean any organization that (i) meets the requirements for participation in the Network as contained in the applicable Network Operating Policies and this Agreement, (ii) is accepted by SHI for participation, and (iii) is a signatory to this Agreement.

1.31 **“System”** shall mean software, portal, platform, or other electronic medium controlled by a Subscribing Participant through which the Subscribing Participant or Participant User sends, receives, discloses or uses Health Data through or from the Network. For the purposes of this definition, it shall not matter whether the Subscribing Participant or Participant User controls the software, portal, platform, or medium through ownership, lease, license, or otherwise.

1.32 “**Treatment**” shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA Regulations.

## **Section 2 Breach Notification**

2.1 **Procedure for Notification of Vendor and Impacted Participants.** Each party to this Agreement agrees that without unreasonable delay but not later than two (2) business days after determining that a Breach occurred, the party responsible for the Breach will notify SHI, the Vendor, and all Subscribing Participants likely impacted by the Breach of such Breach. The notification should include sufficient information for the other notified parties to understand the nature of the Breach. For instance, such notification could include, to the extent available at the time of the notification, the following information:

- 2.1.1 One or two sentence description of the Breach
- 2.1.2 Description of the roles of the people involved in the Breach (e.g., employees Participant Users, service providers, unauthorized persons, etc.)
- 2.1.3 The type of PHI Breached
- 2.1.4 Subscribing Participants likely impacted by the Breach
- 2.1.5 Number of Individuals or records impacted/estimated to be impacted by the Breach
- 2.1.6 Actions taken by the Subscribing Participant to mitigate the Breach
- 2.1.7 Current status of the Breach (under investigation or resolved)
- 2.1.8 Corrective action taken and steps planned to be taken to prevent a similar Breach.

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

2.2 **Proprietary Information.** Information provided by a Subscribing Participant in accordance with this Section, except Health Data, may be Proprietary Information. Such Proprietary Information shall be treated in accordance with Section 3 (Proprietary Information).

2.3 **Legal Obligations.** This Section shall not be deemed to supersede or relieve a party’s obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law, including, but not limited to, those related to Individuals. The parties shall work together to coordinate any notification to Individuals, the federal government, and any public announcement regarding the Breach that may be required by Applicable Law or the policies of a party.

## **Section 3 Proprietary Information.**

3.1 Each Receiving Party shall hold Proprietary Information in confidence and agrees that it shall not, during the term or after the termination of this Agreement, redisclose to any person or entity, nor use for its own business or benefit, any information obtained by it in connection with this Agreement, unless such use or redisclosure is permitted by the terms of this Agreement. Proprietary Information may be redisclosed under operation of law, provided that the Receiving Party immediately notifies the Discloser of the existence, terms and circumstances surrounding such operation of law to allow the Discloser its rights to object to such disclosure. If after Discloser's objection, the Receiving Party is still required by law to redisclose Discloser's Proprietary Information, it shall do so only to the minimum extent necessary to comply with the operation of the law and shall request that the Proprietary Information be treated as such.

#### **Section 4 Representations and Warranties**

4.1 The parties hereby represent and warrant the following as it applies to them respectively:

4.1.1 **Accurate Participant Information.** Except to the extent prohibited by Applicable Law, each Subscribing Participant has provided, and will continue to provide SHI and Vendor with all information reasonably requested by them as is necessary to discharge their duties under this Agreement or Applicable Law, including during any dispute resolution process. Any information provided by a Subscribing Participant to SHI or Vendor shall be responsive and accurate, including any information provided by Subscribing Participant during any registration process for a particular service. Each Subscribing Participant shall provide notice to SHI if any information previously provided by the Subscribing Participant (other than Health Data) materially changes. Each Subscribing Participant acknowledges that SHI reserves the right to confirm or otherwise verify or check, in its sole discretion, the completeness and accuracy of any registration or other information provided by Subscribing Participant at any time and each Subscribing Participant will reasonably cooperate with SHI in such actions, given reasonable prior notice. Notwithstanding the foregoing, SHI is entitled to rely on the accuracy of information provided by each Subscribing Participant, and SHI has no duty to confirm, verify, or check the completeness and accuracy of any information.

4.1.2 **Execution of this Agreement.** Prior to participating in the Network, each Subscribing Participant shall have executed a Subscription Agreement and returned an executed copy to SHI. In doing so, the Subscribing Participant affirms that it has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals and consents in order for it to execute this Agreement. The representative signing this Agreement on behalf of the Subscribing Participant affirms that he/she has been properly authorized and empowered to enter into this Agreement on behalf of the Subscribing Participant. Similarly, SHI affirms that its representatives signing this

Agreement are duly authorized and that SHI has full power and authority to enter into and perform this Agreement.

**4.1.3 Agreements with Subcontractors.** To the extent that a Subscribing Participant uses subcontractors in connection with the Network or its use of Health Data obtained from the Network, each Subscribing Participant affirms that it has valid and enforceable agreements with each of its subcontractors that require the subcontractor to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of any Health Data to which it has access; (iii) as soon as reasonably practicable after determining that a Breach occurred, report such Breach to the Subscribing Participant; and (iv) reasonably cooperate with SHI, Vendor and other Subscribing Participants on issues related to the Network.

**4.1.4 Accuracy of Health Data and Authority to Transmit, Receive and/or Disclose (as applicable).** Each Subscribing Participant hereby represents that at the time of transmission, that (i) the Health Data it provides pursuant to its Subscription Agreement is an accurate representation of the data contained in or available through its System subject to the limitations set forth in Section 5.3 (Incomplete Medical Record), (ii) the Health Data it provides is sent from a System that employs security controls that meet industry standards so that the information and Health Data being transmitted are intended to be free from malicious software in accordance with Article III of this Agreement (Duties of Subscribing Participants), (iii) the Health Data it provides is provided in a timely manner and in accordance with applicable Network Operating Policies, (iv) that Subscribing Participant is authorized to provide or make such Health Data available through the Network under the terms of this Agreement without violating any rights, including copyrights, of third parties, and (v) that Subscribing Participant has met any requirements under Applicable Law including but not limited to obtaining any consent or authorization(s) from the individual who is the subject of the Health Data, or their legally authorized representative, if required, before making a request for such individual's Health Data through the Network. OTHER THAN THE REPRESENTATIONS IN THIS PARAGRAPH, NEITHER SHI, NOR SUBSCRIBING PARTICIPANT MAKE ANY OTHER REPRESENTATION, EXPRESS OR IMPLIED, ABOUT THE HEALTH DATA. MORE SPECIFICALLY, THE HEALTH DATA MADE AVAILABLE THROUGH THE NETWORK IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL THE SUBSCRIBING PARTICIPANT, SHI, OR VENDOR BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY,

NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE SUBSCRIBING PARTICIPANT, SHI AND/OR VENDOR HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH SUBSCRIBING PARTICIPANT, SHI, AND VENDOR DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS, OR OTHER THIRD PARTIES OR DUE TO HARDWARE OR SOFTWARE FAILURES.

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

## **Section 5 Disclaimers**

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

5.2 **Accuracy of Health Data.** Nothing in this Agreement shall be deemed to impose responsibility or liability on a Subscribing Participant, on SHI, or on Vendor related to the clinical accuracy, content or completeness of any Health Data provided pursuant to this Agreement.

5.3 **Incomplete Medical Record.** Each Subscribing Participant acknowledges that Health Data may not include the Individual's full and complete medical record or history.

5.4 **Use of Network in an Emergency.** Subscribing Participant and Participant Users are responsible for determining the appropriate use of the Network for communications or transactions concerning or supporting treatment in an emergency or other urgent situation. Further, to the extent that a Subscribing Participant needs patient information in an emergency or on an urgent basis, Subscribing Participant and Participant Users retain sole responsibility for communicating directly to any provider, including other Subscribing Participants according to the Subscribing Participant's own policies and procedures.



5.5 **Patient Care.** Health Data obtained through the Network is not a substitute for any Subscribing Participant or Participant User, if that person/entity is a health care provider, obtaining whatever information he/she/it deems necessary, in his/her professional judgment, for the proper treatment of a patient. The Subscribing Participant or Participant User, if he/she/it is a health care provider, shall be responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from, or in any way related to, the use of the Network or Health Data made available thereby. None of the other Subscribing Participants or SHI, by virtue of executing this Agreement, assumes any role in the care of any patient.

5.6 **Carrier Lines.** All Subscribing Participants acknowledge that the exchange of Health Data between Subscribing Participants through the Network is to be provided over various facilities and communications lines, and information shall be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which may be beyond the Subscribing Participants', SHI's, or Vendor's control. Provided a Subscribing Participant and Vendor use reasonable security measures, no less stringent than those directives, instructions, and specifications contained in this Agreement, the Subscribing Participants, SHI, and Vendor assume no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted over those carrier lines, which are beyond the Subscribing Participants', SHI's, or Vendor's control, or any delay, failure, interruption, interception, loss, transmission, or corruption of any Health Data or other information attributable to transmission over those carrier lines which are beyond the Subscribing Participants', SHI's, or Vendor's control. Use of the carrier lines is solely at the Subscribing Participants' risk and is subject to all Applicable Laws.

5.7 **License to Common Network Resources.** Subscribing Participant is hereby granted a nonexclusive, nontransferable, revocable and limited license to Common Network Resources solely for use as a Subscribing Participant under this Agreement. Subscribing Participant shall not (a) sell, sublicense, transfer, exploit or, other than pursuant to this Agreement, use any Common Network Resources for Subscribing Participant's own financial benefit or any commercial purpose, or (b) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code to any Common Network Resources. THE COMMON NETWORK RESOURCES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

## **Section 6 Termination**

6.1 **Termination by Participant.** The Subscribing Participant may cancel this Agreement at any time with 30 day's written notice to SHI. Following a notice of termination, the Subscribing Participant is required to continue payment for the 30 day notice period, regardless of whether or not it stops using the Health Information Exchange Services prior to the expiration of this 30 day notice period.

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

6.3 **Termination by SHI.** SHI may terminate, a Subscribing Participant's access to the HIE and this Agreement with respect to a Subscribing Participant as follows:

6.3.1 After taking a suspension action in accordance with Section 6.2 (Suspension by SHI) when there is a substantial likelihood that the Subscribing Participant's acts or omissions create an immediate threat or will cause irreparable harm to another party including, but not limited to, a Subscribing Participant, a Participant User, the Network, Vendor, SHI, or an Individual whose PHI is exchanged through the Network;

6.3.1.1 In the event that the Subscribing Participant has materially breached this Agreement and has not cured such material breach after ten (10) business days' notice;

6.3.1.2 Immediately in the event that the Subscribing Participant violates this Agreement's provisions regarding protection of SHI or Vendor's Proprietary Information; or

6.3.1.3 Without cause, SHI may terminate all Subscribing Participants, Vendor and this entire Agreement upon thirty (30) days' written notice to all parties.

6.4 **Termination of Vendor.** Vendor is engaged by SHI for its role in this Agreement. SHI may terminate Vendor under the terms of that engagement, and shall give written notice to all Subscribing Participants of any such termination. SHI may engage another organization to fulfill the duties of Vendor under this Agreement, as long as such other organization: 1) agrees to comply with the duties of Vendor under this Agreement, and 2) executes this Agreement as Vendor.

6.5 **Effect of Termination.** Upon any termination of this Agreement for any reason, the terminated party shall cease to be a Subscribing Participant and thereupon and thereafter neither that party nor its Participant Users shall have any rights to use the Network (unless such Participant Users have an independent right to access the Network through another Subscribing Participant). SHI shall revoke a terminated Subscribing Participant's access to the HIE through the Vendor and provide notice of such Subscribing Participant's access to the remaining Subscribing Participants. In the event that any Subscribing Participant(s) are terminated, this Agreement will remain in full force and effect with respect to all other Subscribing Participants. Certain provisions of this Agreement survive termination, as more fully described in Section 9.6 (Survival).

6.6 **Disposition of Health Data Upon Termination.** At the time of termination, Recipient (other than Vendor) may, at its election, retain Health Data on Recipient's System (if applicable) in accordance with the Recipient's document and data retention policies and procedures, Applicable Law, and this Agreement. Vendor shall terminate access to or from a terminated Subscribing Participant's system on the termination date for that Subscribing Participant; however, SHI and Vendor may retain audit trail data for a terminated Subscribing Participant for a period of time for legal defense purposes in accordance with applicable document and data retention policies. If the Vendor is terminated pursuant to this Agreement by SHI, or this Agreement is terminated in its entirety, then Vendor (including any of its subcontractors or agents) shall no longer access or transmit any data to or receive data from Subscribing Participants' respective systems, and further Vendor will no longer access, use or store any Health Data and shall comply with a transition plan approved by SHI, or if none is agreed upon, Vendor will delete or destroy (and certify such destruction to SHI and Subscribing Participants) of any data, including but not limited to any Health Data; however, if Vendor determines that returning or destroying PHI is not feasible, then Vendor must maintain the privacy protections under the other provisions of this Agreement relating to protection of Health Data and according to Applicable Law for as long as Vendor retains the PHI, and Vendor

may only use or disclose the PHI for the specific uses or disclosures that make it necessary for Vendor to retain the PHI.

## **Section 7 Liability**

7.1 **Party Liability.** As between parties to this Agreement: Each party shall be responsible for its own acts and omissions and not for the acts or omissions of any other party. In circumstances involving harm to other parties caused by the acts or omissions of individuals who access Health Data or Proprietary Information through the Network or by use of any password, identifier, or log-on received or obtained directly or indirectly, lawfully or unlawfully, from Vendor, SHI, the Subscribing Participant or any of the Participant Users, each party shall be responsible for such harm to the extent that the individual's access was caused by the party's breach of the Agreement or its negligent conduct for which there is a civil remedy under Applicable Law. Notwithstanding any provision in this Agreement to the contrary, the party shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This section shall not be construed as a hold harmless or indemnification provision. To the extent that a Subscribing Participant is prohibited, by Applicable Law, from being subject to the liability outlined in this Section 7 (Liability), it shall be exempt from this Section 7. If the Subscribing Participant is an agency of the State of Florida, the provisions of Section 768.28, Florida Statutes, relating to sovereign immunity shall govern.

7.2 **Effect of Agreement.** Except as provided in Section 4 (Representations and Warranties), and this Section 7, nothing in this Agreement shall be construed to restrict SHI's, Vendor's or a Subscribing Participant's right to pursue all remedies available under Applicable Law for damages or other relief arising from acts or omissions of other parties hereto related to the Network or this Agreement, or to limit any rights, immunities or defenses to which a party may be entitled under Applicable Law.

7.3 **Limited Release of SHI and Vendor Liability.** Subscribing Participants hereby release SHI from any claim arising out of any inaccuracy or incompleteness of Health Data or any delay in the delivery of Health Data or failure to deliver Health Data to the Network when requested. Subscribing Participant hereby release Vendor from any claim arising out of any inaccuracy or incompleteness of Health Data or any delay in the delivery of Health Data or failure to deliver Health Data to the Network when requested except for those arising out of Vendor's gross negligence.

## **Section 8 Indemnification**

8.1 **Indemnification by Subscribing Participant.** Subscribing Participant will indemnify and hold harmless SHI and the Vendor, their employees and agents, for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising directly from Subscribing Participant's or Participant's

Users' breach of this Agreement, including the unauthorized or improper use of the Network or Subscribing Participant's or Participant's Users' use or disclosure of Health Data for any purpose other than a Permitted Purpose. The Subscribing Participant will not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits).

**8.2 Indemnification by SHI for Breach.** SHI will indemnify and hold harmless Subscribing Participants, Participant Users, their employees and agents for any actual damages, reasonable expenses and costs, including reasonable attorneys' fees, from claims by third parties arising directly from SHI's gross negligence or willful misconduct leading to a breach of this Agreement. SHI shall not be liable for indirect, special, exemplary, consequential or punitive damages (including, but not limited to, loss of profits). The foregoing indemnity shall apply only to the extent of the willful misconduct or gross negligence of the SHI.

**8.3 Indemnification in General.** In the event a suit is brought against a party to this Agreement under circumstances where Section 8 (Indemnification) applies, the indemnifying party, at its sole cost and expense, shall defend the sued party in such suit if written notice thereof is promptly given to the indemnifying party within a period wherein the indemnifying party is not prejudiced by lack of such notice. If indemnifying party is required to indemnify and defend, it will thereafter have control of such litigation, but the indemnifying party may not enter into any settlement or other agreement with respect to any claim that imposes any duty or obligation on the sued party, or provides for an admission of fault on the part of the sued party, without the prior written consent of the sued party, which consent shall not be unreasonably withheld. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the sued party; and the indemnifying party, in defending any action on behalf of the sued party, shall be entitled to assert in any action every defense or immunity that the sued party could assert in its own behalf. This indemnification not only applies to civil suits filed against the sued party, but also to administrative actions and civil penalties on the sued party imposed by state or federal government agencies that may result from breach of this Agreement by the indemnifying party. Any action or claim against the indemnifying party must be brought in writing within one (1) year from the date of filing of the claim by the third party against the sued party, otherwise the indemnity is invalid.

## **Section 9 Miscellaneous**

**9.1 Changes to Applicable Law.** Any new legislation or amendments to government regulations or administrative rules that become effective after the Effective Date of this Agreement shall be mutually agreed to by SHI, the Vendor and Subscribing Participants as to the applicability of the change to this Agreement.

**9.2 Entire Agreement.** This Agreement sets forth the entire and only agreement among SHI and the Subscribing Participants relative to the subject matter in this Agreement and

supersedes all previous negotiations and agreements, whether oral or written. Any representation, promise, or condition, whether oral or written, not incorporated herein, shall not be binding upon SHI or any Subscribing Participant.

9.3 **Amendment/Modification.** This Agreement may be amended only by an instrument in writing signed by the party against whom the change, waiver, modification, extension, or discharge is sought, unless otherwise indicated in this Agreement.

9.4 **Assignment.** No Subscribing Participant shall assign or transfer this Agreement, or any part thereof, without the express written consent of SHI. Any assignment that does not comply with the requirements of this Section shall be void and have no binding effect.

9.5 **Additional Participants.** Upon SHI's acceptance of a new Subscribing Participant in the Network, SHI will coordinate for the new Subscribing Participant to execute and become bound by this Agreement.

9.6 **Survival.** The provisions of Article II (Permitted Uses of the Health Information Exchange), SHI HIE General Participation Terms and Conditions Sections 2 (Breach Notification), 3 (Proprietary Information), 6 (Termination), 7 (Liability), 8 (Indemnification), 9 (Miscellaneous) and any other provisions of this Agreement that by their nature or by express statement should survive termination, shall survive the termination of this Agreement. In addition, any Subscribing Participant's obligation to pay fees to SHI shall survive termination of this Agreement, including the terms of Article 6 (Payment for Services).

9.7 **Waiver.** No failure or delay by any party in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.

9.8 **Ambiguities.** Each party and its counsel have participated fully in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.9 **Validity of Provisions.** In the event that a court of competent jurisdiction shall hold any Article, Section, or any part or portion of any Article, Section, or other part of this Agreement, invalid, void or otherwise unenforceable, each and every remaining Article, Section or part or portion thereof shall remain in full force and effect, as long as the original intent of the Agreement would not thereby be frustrated.

9.10 **Priority.** In the event of any conflict or inconsistency between a provision in the General Terms and Conditions of this Agreement and the body of the Subscription Agreement, the terms contained in the body of the Subscription Agreement shall prevail.

9.11 **Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify, or aid in the interpretation or construction of meaning of the provisions of this Agreement. All references in this instrument to designated “Articles”, “Sections”, and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement.

9.12 **Gender.** Whenever the context so requires, the singular shall include the plural and plural shall include the singular, and the gender of any pronoun shall include other genders.

9.13 **Relationship of the Parties.** The parties are independent contracting entities. Nothing in this Agreement shall be construed to create a partnership, agency relationship, or joint venture among the parties. No party hereto shall have any authority to bind or make commitments on behalf of one another. No party to this Agreement shall be held liable for the acts or omissions of another party hereto.

9.14 **Third-Party Beneficiaries.** With the exception of the Subscribing Participants, Vendor, and SHI, there exists no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

9.15 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the Subscribing Participant whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.

9.16 **Force Majeure.** A party shall not be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (i) severe weather or storms; (ii) earthquakes or other disruptive natural occurrences; (iii) strikes or other labor unrest; (iv) power failures; (v) nuclear or other civil or military emergencies; (vi) terrorist attacks; (vii) acts of legislative, judicial, executive, or administrative authorities; or (viii) any other circumstances that are not within a party’s reasonable control.

9.17 **Insurance by Subscribing Participants.** Each Subscribing Participant shall carry insurance in an amount sufficient to cover its obligations hereunder; however, each Subscribing Participant may self-insure to meet the obligation of coverage in this section, provided that such self-insurance meets all regulatory requirements.

9.18 **Time Periods.** Any of the time periods specified in this Agreement may be changed pursuant to the mutual written consent of SHI and the Subscribing Participant.