

INTERAGENCY AGREEMENT  
BETWEEN  
THE ILLINOIS HEALTH INFORMATION EXCHANGE AUTHORITY  
AND  
THE OFFICE OF HEALTH INFORMATION TECHNOLOGY  
REGARDING  
PROVISION OF OPERATIONAL SUPPORT

This Agreement is made and entered into by and between the Illinois Health Information Exchange Authority and the Office of Health Information Technology, a unit within the Office of the Governor, pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220 *et al.*

WHEREAS, the State of Illinois Department of Healthcare and Family Services (“HFS”) applied for and received under the American Recovery and Reinvestment Act of 2009 (“ARRA”) federal grant funds administered by the Federal HHS Office of National Coordinator for Health Information Technology (“ONC”) to develop and implement a state-level health information exchange in Illinois (the “Grant”); and

WHEREAS, ARRA committed significant federal funding to ensure that all Americans have an electronic health record by 2014, and will direct a portion of the funding to the State of Illinois (“State”) for the purpose of building health information technology infrastructure; and

WHEREAS, ARRA funding is also dedicated for financial incentives to Medicaid and Medicare providers for the adoption and meaningful use of electronic health records in order to improve the delivery of care; and

WHEREAS, the Governor of Illinois, Pat Quinn, issued an Executive Order 10-1, which created the Office of Health Information Technology (“OHIT”) in the Governor's Office for the purpose of overseeing the State's development and implementation of health information technology initiatives, including the creation of a state-level health information exchange, promoting the development of health information technology, increase the adoption and meaningful use of electronic health records, and directing the State’s planning for a statewide exchange; and

WHEREAS, HFS has designated the Governor’s Office as HFS’ fiscal agent for purposes of administering the Grant; and

WHEREAS, the Illinois General Assembly enacted the Illinois Health Information Exchange and Technology Act (20 ILCS 3860/1 *et seq.*)(the “Act”), pursuant to which the Illinois Health Information Exchange Authority (“Authority”) was created as an agency of the State for the purpose, among others, of establishing the Illinois Health Information Exchange (“ILHIE”); and

WHEREAS, the Act established a Health Information Exchange Fund (the “Fund”) as a separate fund outside the State treasury from which disbursements may be made for purposes related to the operations and functions of the Authority and the ILHIE (20 ILCS 3860/25);

WHEREAS, the Act provided the Authority the power to determine, charge and collect any fees, charges, costs and expenses from any healthcare provider or entity in connection with the Authority's duties under the Act, to be deposited into the Fund (20 ILCS 3860/20(9));

WHEREAS, no resources have to date been deposited into the Fund, but it is anticipated that the Authority will obtain the necessary resources for the future funding of its operations and functions;

WHEREAS, certain staff in OHIT have expertise and experience which would be valuable to the Authority in the development and implementation of the ILHIE; and

WHEREAS, OHIT is able to provide operational support to the Authority, including the provision of office space, supplies, and clerical, financial, and accounting services; and

WHEREAS, the Authority and OHIT each desire to formalize their understanding of the provision of operational support to be provided by the OHIT to the Authority, including, but not limited to, the clarification of processes and procedures involved in provision of operational support as well as the processing and payment of the Authority expenses and costs by OHIT, initially from the funds provided under the Grant, and subsequent to the Authority receiving resources deposited into the Fund (the "Authority Funding"), from disbursements made from the Fund;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises herein, the parties agree as follows:

#### I. Responsibilities of the Parties:

##### A. OHIT Responsibilities:

1. OHIT will provide the following operational support to the Authority: office support, facilities, legal services, information technology, procurement, accounting and fiscal services, human resource services and other administrative support, as necessary.
2. OHIT will provide administrative support services to the Authority. The number of staff designated or assigned to provide administrative support services to the Authority will be determined by OHIT in consultation with the Authority. OHIT may provide temporary staffing, independent contractors and intern services to assist with the development and administration of the Authority's initiatives.
3. The administrative support provided by OHIT to the Authority shall be purely ministerial in nature, and all substantive decision-making authority over the administrative functions and services provided by any OHIT employee shall be retained by OHIT. OHIT retains responsibility for the day-to-day management, supervision, and discipline of any designated or assigned employees. All designated or assigned employees working with the Authority shall report directly to their OHIT supervisor.

4. Any OHIT employee providing services to the Authority shall remain a OHIT employee and will remain and continue to be reported on OHIT's headcount for budget reporting purposes.

5. All personnel documents related to OHIT employees shall remain the property of OHIT, regardless of where those documents are located, or which party to this Agreement created the records or maintains them.

6. OHIT agrees that all documents created on behalf of the Authority by OHIT employees as well as all Authority records, such as Authority Board minutes and correspondence, are the property of the Authority regardless of where those documents are located, or which party maintains the documents.

7. OHIT will provide office space to the Authority as OHIT deems appropriate, in consultation with the Authority. All decisions regarding the operation and management of any office space provided remain the responsibility and under the authority of OHIT.

8. OHIT will provide office space, office supplies and office equipment, including but not limited to desks, file cabinets, chairs and IT equipment, to OHIT employees it designates or assigns to work with the Authority.

9. OHIT will provide payroll services to the Authority, and will take the necessary administrative steps for the payment of the Authority's employees.

#### B. The Authority Responsibilities:

1. All Authority expenses and costs will be processed for payment by OHIT on behalf of the Authority. Until such time as the Authority receives resources deposited into the Fund (the "Authority Funding"), such expenses and costs will be paid from the resources available to OHIT, including the Grant. All expenditures by the Authority shall be coordinated with OHIT for purposes of daily cash resource management. If at any time resources sufficient to perform the tasks detailed in this Agreement are not available to OHIT, OHIT shall have no duty to secure resources for or on behalf of the Authority, and OHIT in its discretion may discontinue performing any or all of the tasks detailed in this Agreement.

2. Prior to the Authority Funding, the Authority in consultation with OHIT shall establish expenditure policies with regard to the Fund, and shall designate to OHIT such signature authority as may be necessary or desirable for OHIT to enter into contracts, process vouchers and spend monies from the Fund on behalf of the Authority. The Authority shall not make any expenditure from the Fund unless sufficient dollars have been received and deposited into the Fund. Unless otherwise agreed, it is anticipated that subsequent to the Authority Funding, all Authority expenses and costs incurred thereafter will be paid from the Fund. Subsequent to the Authority Funding, unless otherwise agreed, OHIT shall be entitled to compensation from the Fund upon submission of invoices and proof of claim for services provided under this Agreement. Upon termination of this Agreement, OHIT shall be entitled to receive from the Authority compensation for both (i) services provided under this Agreement, and (ii) any non-cancelable obligations incurred by OHIT, subsequent to the Authority Funding up to an including the date of termination. A non-cancelable obligation is an obligation incurred by OHIT

on the Authority's behalf which cannot be reimbursed, refunded or cancelled in accordance with the vendor agreement or terms.

3. The Authority grants OHIT access to such documents, records, and files necessary to carry out the shared operational and administrative services under this Agreement.

4. It is understood that and agreed that the terms of any current union contract, any other collective bargaining agreement, or the State of Illinois Personnel Code and its Rules, applicable to any OHIT employee providing services to the Authority, shall remain in force and shall be respected in its entirety by the Authority, subject to the provisions of the Act.

5. The Authority and its employees will direct any and all inquiries regarding OHIT's operational support activities provided to the Authority to the Director of OHIT, or her designee.

### C. Federal Grant Accounting

1. The parties shall work cooperatively to develop and implement a process for requesting and depositing all available federal funds provided to or for the benefit of OHIT and/or the Authority, including the Grant, and the filing of Federally-required reports in connection with such funds, and the distribution of said funds as set forth in any grant agreement between or among any of HFS, OHIT, the Authority and the Federal government.

2. It is anticipated that OHIT will be acquiring products and services for the development and implementation of the Illinois Health Information Exchange ("ILHIE"), principally pursuant to that certain "Statewide Health Information Exchange RFP (PBC #11-62437)" (the "RFP"). It is anticipated that the Authority, in accordance with the Act, may assume certain of OHIT's contractual obligations arising under the RFP, and may assume responsibility, in whole or in part, for the ownership and/or control of assets or services acquired by OHIT in whole or in part with Grant funds. The parties agree to cooperate in the establishment by June 30, 2012, or as soon thereafter as reasonably possible and mutually determined, of an agreement regarding the respective roles and responsibilities of OHIT, the Authority and other State of Illinois agencies, including HFS, in the ownership and/or control of the assets or services constituting the ILHIE (the "ILHIE Operation Agreement"). To the extent that the ILHIE Operation Agreement envisions transition to the Authority from OHIT or from any other State of Illinois agency of any appropriate functions or assets related to the ILHIE, the Authority shall work cooperatively with such entities to develop and implement a process for such transition, and shall provide such information or certifications as may be required by ONC, HFS, the Office of Inspector General for HFS, the Illinois Auditor General and other state and federal agencies.

3. This Agreement and all books, records and supporting documents related thereto shall be available for review or audit by ONC, HFS, the Office of Inspector General for HFS, the Illinois Auditor General and other state and federal agencies. The parties agree to cooperate with such reviews and audits. The parties agree to retain all financial and programmatic records, supporting documents, statistical records and other records relating to this Agreement for a period of seven (7) years. If any litigation, claim or other action involving the records has been initiated prior to the expiration of the seven (7) year period, the records shall be retained until completion of the

action and resolution of all issues which arise from it or until the end of the seven (7) year period, whichever is later.

## II. Continued Communication and Cooperation

While this Agreement details some of the operational support to be provided by OHIT to the Authority, the parties recognize that additional details, procedures and processes may need to be developed to fully accomplish the operational support the Authority may desire to accomplish its purposes under the Act. The parties pledge their continued communication and cooperation, such approach being essential to the objectives of the Act.

## III. Confidentiality:

1. Each party, including its employees, agents and subcontractors, to this Agreement may have or gain access to confidential data or information owned or maintained by the other party in the course of carrying out its responsibilities under this Agreement. The receiving party shall presume all information received or to which it gains access pursuant to this Agreement is confidential unless otherwise designated by the disclosing party. No confidential data collected, maintained, or used in the course of performance of the Agreement shall be disseminated except as authorized by law and with the written consent of the disclosing party, either during the period of this Agreement or thereafter. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving party's possession prior to its acquisition from the disclosing party; received in good faith from a third-party not subject to any confidentiality obligation to the disclosing party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving party; or is independently developed by the receiving party without the use or benefit of the disclosing party's confidential information.

2. If a party receives a request from a third party for confidential information furnished by the other party, or if either party is served with a subpoena, court order, or other process requiring production of confidential information or testimony related thereto, the party shall:

a. Immediately notify the other party that production is being sought, and afford the other party the opportunity to take whatever action it deems appropriate to protect the confidential nature and/ or privileged nature of the confidential information;

b. Cooperate fully in preserving and protecting the full scope of all privileges and claims of confidentiality that may apply to such confidential information; and

c. Notify the third party seeking production of the confidential information that the information belongs to the other party and that requests for the release of such information must be made directly with the other party, pursuant to any applicable law or administrative regulation.

## IV. Notices:

All written notices required under this Agreement will be deemed given two (2) business days after being delivered or deposited in the U.S. mail, postage prepaid and addressed to the

addresses set forth below (or to such address as the parties may designate in writing), or upon facsimile or hand delivery if receipt is confirmed. Either party may at any time give notice in writing to the other party of a change of name, address, or telephone number.

OHIT: Laura Zaremba, Director/State HIT Coordinator  
Office of Health Information Technology  
Office of the Governor  
James R. Thompson Center  
100 West Randolph, 2-201  
Chicago, Illinois 60601  
Telephone: 312/793-0063

Authority: Dr. Cheryl Whitaker, Chair  
Illinois Health Information Exchange Authority  
c/o Office of Health Information Technology  
James R. Thompson Center  
100 West Randolph, 2-201  
Chicago, Illinois 60601

#### V. Term:

This Agreement shall be effective from February 1, 2011 until June 30, 2012. This Agreement may be renewed annually upon mutual written consent of the parties. Either party may terminate this Agreement upon sixty (60) days written notice, provided, however, that such termination shall not affect the continuing rights and obligations of either party with respect to Federal Grant Accounting or Confidentiality set forth in this Agreement.

#### VI. Amendments:

This Agreement may be amended upon mutual agreement of both parties. Any amendments shall be subject to interagency discussions and concurrence in writing, thereafter, to be reduced to writing and incorporating this Agreement by reference.

#### VII. Preservation of Existing Statutory Authority and Obligations:

Nothing in this Agreement restricts, enlarges, or otherwise nullifies the respective jurisdiction of the parties. Neither this Agreement, nor its termination, shall affect the rights and obligations of either party under applicable statutes or regulations, nor be deemed an interpretation of such statutes or regulations.

#### VIII. Entire Agreement; Severability:

Nothing contained herein shall be construed as an agreement to perform any illegal act or any act not permitted to be performed by either party. In the event this Agreement is determined to be invalid by a court of competent jurisdiction, it shall be terminated immediately. Should any

portion or portions of the Agreement be found to be invalid, the said portion or portions shall not be construed to render the entire Agreement void, but shall be severed from the Agreement upon such finding. Nothing contained herein serves to limit, alter or amend either party's duties, rights or responsibilities as set out in the applicable state and federal statutes, laws or regulations. The Authority and OHIT understand and agree that this agreement constitutes the entire agreement between them and that no promises, terms, or conditions not recited or incorporated within this agreement, including prior or oral discussions not referenced in this agreement, shall be binding upon either the Authority or OHIT. This agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on the parties, notwithstanding that all of the parties are not signatory to the same counterpart.

IN WITNESS WHEREOF, each party has hereunto caused this Agreement to be executed by its duly authorized representative as evidence of their approval of this Interagency Agreement.

Office of Health Information Technology  
(OHIT):

Illinois Health Information Exchange  
Authority (Authority):

Laura Zaremba  
Director  
Date:

Dr. Cheryl Whitaker  
Chair  
Date: