

**ILLINOIS HEALTH INFORMATION EXCHANGE DIRECT  
MESSAGING SERVICES AGREEMENT**

This Illinois Health Information Exchange Direct Messaging Services Agreement (“Agreement”) is made as of \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between the State of Illinois Office of Health Information Technology for and on behalf of the Illinois Health Information Exchange Authority (Agency), an instrumentality and an administrative agency of the State of Illinois, and \_\_\_\_\_ (“Subscriber”). Agency and the Subscriber may be referred to herein as a “party” or collectively as “parties”.

**RECITALS**

**WHEREAS**, the Agency is charged with the operation and maintenance of a state-level health information exchange, the Illinois Health Information Exchange (the “ILHIE”), for the secure transmission of patient health information among healthcare providers, payers, government agencies and other authorized participants in the ILHIE;

**WHEREAS**, among the electronic data transmission services offered through the ILHIE are the ILHIE Direct Secure Messaging Services (“Direct Services”) which provides registered participants access to a network for encrypted data exchange;

**WHEREAS**, ILHIE utilizes the ILHIE Direct Secure Messaging Network (“ILHIE Direct Network”) as the network for the Direct Services;

**WHEREAS**, Subscriber is the custodian of electronic patient health information that Subscriber wishes to exchange with other parties utilizing Direct Services;

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

**I      Services**

The Agency will provide Direct Services in accordance with the terms and conditions set forth herein. Direct Services shall include providing access to Direct secure mailboxes as well as access to the ILHIE Direct Network for electronic transmission of patient health information.

**II     Subscriber Obligations:**

Subscriber shall comply with the following provisions in order to receive Direct Services through the ILHIE Direct Network.

- A. The Subscriber agrees to access the ILHIE Direct Network and use the Direct Services only in compliance with all requirements set forth in this Agreement. The Subscriber will use the ILHIE Network and Direct Services only for a permissible purpose. The Subscriber will not send material that is unlawful, obscene, defamatory, threatening,

harassing, abusive, slanderous, hateful or embarrassing to any other person or entity. The Subscriber acknowledges and agrees that if the Subscriber uses the ILHIE Direct Network to send a message to an individual or entity not included in ILHIE Direct Network directory, then it is the responsibility of the Subscriber to use the correct e-mail address for that individual or entity.

## **B. Entity**

The Subscriber (individual or entity) must submit to an authentication and verification process as required by Agency in order to receive access to the ILHIE Direct Network and Direct Services. After the Subscriber and its Administrator (if any) successfully complete the authentication and verification process, its account may be set up in accordance with the requirements set forth below.

## **C. Administrators and Authorized Users**

1. Subscriber may appoint an administrator to manage its account (“Administrator”). The Administrator must submit to an authentication and verification process as required by Agency in order to receive access to the ILHIE Direct Network and Direct Services. After successfully completing the verification process, the Administrator and/or Administrator may create, manage and terminate sub-accounts used by employees (“Authorized Users”) under the Subscriber’s account as set forth herein. With regard to providing access to Authorized Users, the Subscriber and/or its Administrator shall:
  - a. Use reasonable care in selecting Authorized Users and shall require that they act in compliance with relevant provisions of this Agreement.
  - b. Create, terminate and manage sub-accounts for Authorized Users, including log-in/password generation and resetting.
  - c. Apply any appropriate sanctions against an Authorized User who fails to comply with any provision of this Agreement.
  - d. Immediately remove access to the ILHIE Direct Network from an Authorized User if the Authorized User ceases to be qualified as such for any reason including, but not limited to, termination of employment or failure to comply with this Agreement. In the event the Subscriber or Administrator alters any privileges or authorizations of the Authorized User, the Administrator and/or Subscriber shall determine whether the Authorized User requires continued access to the ILHIE Direct Network, and if not shall terminate such access.
2. With regard to the Administrator and Authorized Users:
  - a. Subscriber shall promptly notify Agency in the event there is a change in the identity of the Administrator.
  - b. Subscriber represents and warrants that selection procedure for Authorized Users is at least as rigorous as the internal administrative process or procedure for granting access to the Subscriber’s patients electronic or paper health records.

- c. In the event the Subscriber, Administrator or an Authorized User materially breaches the terms of this Agreement including, but not limited to, the representation and warranty set forth above, or the Subscriber, Administrator or Authorized User violates applicable state and/or federal law, the Subscriber agrees to indemnify the Agency and its officers, directors, affiliates, agents and contractors from and against any demand, suit, action, or proceeding brought by any third party and any and all related damages, expenses, including reasonable attorney's fees and settlement costs, as applicable losses from such portions of any demand, suit, action, or proceeding.
- d. Each Subscriber must have valid and enforceable agreements with each of its Authorized Users that require the Authorized User to, at a minimum: (i) comply with all applicable law; (ii) reasonably cooperate with the Subscriber on issues related to this Agreement; (iii) use or disclose proprietary information or protected health information (PHI) only for a permitted purpose; (iv) use proprietary information or PHI received from another Subscriber or Authorized User in accordance with the terms and conditions of this Agreement; (v) as soon as reasonably practicable after determining that a breach occurred, report such breach to the Subscriber; and (vi) refrain from disclosing to any other person any passwords or other security measures issued to the Authorized User by the Subscriber. Notwithstanding the foregoing, for Authorized Users who are employed by a Subscriber or who have agreements with the Subscriber which became effective prior to the date of this Agreement, compliance with this provision may be satisfied through written policies and procedures that address (i) through (vi) so long as the Subscriber can document that there is a written requirement that the Authorized User must comply with the policies and procedures.
- e. Subscriber shall require that any Authorized User that is a Business Associate shall enter into a Business Associate Agreement or an agreement with protections against disclosure at least equal to those required to be in a Business Associate Agreement

#### **D. Payment**

Subscriber agrees to pay Agency for services in accordance with Exhibit A or any amendment thereto. Subscriber shall be invoiced annually on July 1, or if the Effective Date is after July 1 and before June 30 of the following year, within 30 days after the Effective Date. Payment shall be due within thirty (30) calendar days of the date of the invoice for services. Fees are non-refundable. If Subscriber chooses to terminate prior to the end of the term, there will be no refund for the current year and Subscriber will be assessed an early termination fee of 50% of the fees due for the remainder of the term. Failure to timely pay all invoiced amounts may result in termination. Subscriber must pay all costs incurred by Agency as a result of a returned on nonsufficient funds check.

## **E. Subscriber Data.**

To receive Direct Services under this Agreement, Subscriber must provide the Agency certain data (“Subscriber Data”). Subscriber agrees that Subscriber Data may be used for registration of Subscriber to receive Direct Services under this Agreement and for the receipt of information from Agency regarding ancillary and additional ILHIE services that the Agency may from time to time make generally available. Subscriber Data may be incorporated into ILHIE directories which may be provided by the Agency for use by third parties.

F. The Subscriber agrees to use the ILHIE Direct Network and the Direct Services in full compliance with all applicable federal and state laws, rules and regulations, including but not limited to all requirements regarding the need to obtain patient consents prior to sharing patients’ health information through the ILHIE Direct Network., Subscriber will comply with all state and Federal requirements regarding notice and authorization in connection with the disclosure of patient PHI.

## **III Other Terms and Conditions**

### **A. Term and Termination**

1. This Agreement shall commence \_\_\_\_\_, 20\_\_\_\_\_, and continue for \_\_\_\_  
\_\_\_\_\_ [one, two or three] calendar year(s) (the “Term”), until June 30, 20 \_\_\_\_\_, unless terminated by Agency as set forth below.
2. Subscriber shall not terminate this Agreement prior to the end of the Term.
3. Agency may terminate this Agreement as follows: (a) for convenience, on thirty (30) days prior notice, (b) within 5 days if Subscriber violates the terms and conditions of this Agreement, other than payment terms; (c) if, after receiving notice of late payment, Subscriber fails to pay within 30 days after receipt. If Agency terminates pursuant to (a) above, then Subscriber shall receive a refund of its fees for the remainder of the term year.

### **B. Disclaimers & Warranties**

Except as expressly stated in this section B, all services are provided on an ‘as is, as available’ basis. Agency, its licensors, affiliates, contractors, agents or employees expressly disclaim to the maximum extent permitted by law, all warranties, expressed or implied, oral or written, including, without limitation: (i) any warranty that any content, deliverables or services are error-free, accurate or reliable or will operate without interruption or that all errors will be corrected or will comply with any law, rule or regulation; (ii) any and all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement; and (iii) any and all implied warranties arising from statute, course of dealing, course of performance or usage of trade. No advice, statement or information given by Agency, its licensors, affiliates, contractors, agents or employees shall create or change any warranty provided herein. Subscriber expressly acknowledges and agrees that the content is not designed or intended to meet all of its needs or requirements, including reporting that is

required under applicable laws. Subscriber assumes all responsibility for the selection of the Direct Services provided hereunder to achieve its intended results. Subscriber shall be solely responsible for ensuring the accuracy of all content and proprietary content and shall be solely liable for all use of content and proprietary content that it has submitted.

Subscriber acknowledges that use of or connection to the internet provides the opportunity for unauthorized third parties to circumvent security precautions and illegally gain access to the Direct Services and Subscriber Data. Accordingly, Agency, its licensors, affiliates, contractors, agents and employees cannot and do not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the ILHIE Direct Network or the internet.

Subscriber assumes sole responsibility and liability for compliance with the terms and conditions of this Agreement. Subscriber further assumes sole responsibility and liability for results obtained from the use of the Direct Services and for conclusions drawn from such use. Subscriber acknowledges and agrees that the Direct Services are not intended to provide medical advice, opinions, diagnosis, or a suggested course of treatment. Subscriber further agrees that the sole and exclusive responsibility for any medical decisions or actions with respect to a patient's medical care and for determining the accuracy, completeness or appropriateness of any diagnostic, clinical or medical information resides solely with Subscriber. Subscriber accepts all liability for such diagnosis or treatment. The Subscriber releases and holds harmless any person or entity providing information through the ILHIE Direct Network from any liability, cause of action, or claim related to the completeness or lack thereof of the information. Agency, its licensors, affiliates, contractors, agents or employees shall have no liability for any claims, losses or damages arising out of or in connection with Subscriber's use of the Direct Services and any third-party products, services, software or web sites.

To the fullest extent permitted by law, Agency, its licensors, affiliates, contractors, agents or employees' total liability (including attorneys' fees awarded under this Agreement) to Subscriber for any claim by Subscriber or any third parties under this Agreement, will be limited to the fees paid by Subscriber for the prior twelve (12) months. In no event will Agency, its licensors, affiliates, contractors, agents or employees be liable to provider or other third parties for any indirect, special, incidental, exemplary punitive, treble or consequential damages (including, without limitation, loss of business, revenue, profits, staff time, goodwill, use, data, or other economic advantage), whether based on breach of contract, breach of warranty, tort (including negligence), product liability or otherwise, whether or not previously advised of the possibility of such damages.

This section will survive termination of the Agreement.

### **C. Dispute Resolution**

The parties agree to exercise good faith and use their best efforts to settle any dispute as to fees or the meaning of this Agreement. In the event Subscriber disputes an invoice or portion thereof in good faith, it shall pay any undisputed portion and notify Agency in writing of any

disputed amount by the due date of the applicable invoice. If the parties are unable to settle a dispute within sixty (60) calendar days, Agency may suspend or terminate its services hereunder without obligation or liability to Subscriber.

The parties may seek damages or such other right or remedy as they may have at law.

**D. Notices**

Any notice or other communication required under this Agreement shall be in writing and sent to such address as a party shall designate in writing. Notices or communications to or between the Subscriber and Agency shall be considered to have been delivered: (a) two (2) business days after deposit in the mail when mailed by first class mail, or one (1) business day after transmission as an email.

If to Subscriber:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for mailing annual invoice:

If to Agency: Illinois Office of Health Information Technology  
100 W. Randolph St., Ste. 2-201  
Chicago, IL 60601  
Attn: Director

with a copy to: Illinois Health Information Exchange Authority  
100 W. Randolph St., Ste. 4-750  
Chicago, IL 60601  
Attn: Executive Director

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

**E. Business Associate Agreement**

The Subscriber agrees that it hereby enters into a Business Associate Agreement with Agency as defined and required by the Health Information Portability and Accountability Act (“HIPAA”), attached hereto as Exhibit B. References in the Business Associate Agreement herein to “Provider” shall refer to the Subscriber and/or the person or entity that is a Covered Entity (as defined by HIPAA) with respect to the information disclosed by means of the ILHIE Direct Network.

**F. Intellectual Property and Data Use**

Subscriber will not upload or transmit any communications or content of any type that infringes or violates any rights of any third party. Subscriber acknowledges that if it provides any ideas, advice, recommendations, evaluations, representations of needs, proposals, improvements, or the like relating to the ILHIE Direct Network (“ILHIE Direct Network Feedback”), then Subscriber shall have no right, title or interest, including all intellectual property rights, in and to all such ILHIE Direct Network Feedback.

## **G. Miscellaneous**

1. Entire Understanding. This Agreement, , any other document incorporated herein, and any exhibit(s) attached constitute the entire understanding and agreement of the parties with regard to the subject matter herein, and any and all prior agreements, understandings and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
2. Governing Law. In the event of any dispute arising out of this Agreement: the Participant or Other Participant receiving and providing Protected Information will be held liable to abide by the law of the State of Illinois and federal law. A reference in this Agreement to a section in a federal, State, or local statute, law, or regulation means the section as in effect or as amended
3. Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.
4. Amendments in Writing. This Agreement may not be amended except in a writing signed by a duly authorized representative of each of the respective parties.
5. No Special Relationship. Nothing contained herein or relating to the subject matter hereof shall be construed to create an employment, principal-agent, or fiduciary relationship, or a partnership or joint venture, or any relationship other than a contractual relationship, between Subscriber and Agency, and neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever absent written consent. Agency will provide the Interface as an independent contractor. Agency does not undertake by this Agreement or otherwise to perform any obligation of Subscriber, whether regulatory or contractual, or to assume any responsibility for Subscriber’s business or operations.
6. Assignment. Subscriber shall not assign this Agreement, or any of the rights or obligations contained in this Agreement, without the prior review and written consent of OHIT. Any such assignment without OHIT’s written consent shall be void and have no binding effect. This Agreement shall be binding on the Subscriber, its successors and permitted assigns. Notwithstanding the foregoing, OHIT shall be authorized without further consent of Participant to assign this Agreement in whole or in part to the Illinois Health Information Exchange Authority (“Authority”), in furtherance of the Authority’s rights and duties under Illinois law, including the Illinois Health Information Exchange and Technology Act (20 ILCS 3860/).

Each party has caused this Agreement to be signed by a duly authorized representative below:

**STATE OF ILLINOIS OFFICE OF HEALTH  
INFORMATION TECHNOLOGY FOR AND  
ON BEHALF OF THE ILLINOIS HEALTH  
INFORMATION EXCHANGE AUTHORITY**

**SUBSCRIBER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

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

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

Exhibit A

Fee Schedule



**ILHIE Direct Pricing (effective 7/1/13)**

Mailboxes Per Organization	Yearly Cost Per Mailbox (1-year agreement)	Yearly Cost Per Mailbox (2-year agreement)	Yearly Cost Per Mailbox (3-Year agreement)
1-9	\$120	\$90	\$80
10-49	\$96	\$72	\$64
50-249	\$72	\$54	\$48
250+	\$60	\$45	\$40

**Promotional Offers\***

- Sign a **two-year agreement** and receive service at a 25% discount (see table above)
- Sign a **three-year agreement** and receive service at a 33% discount (see table above)

\*All contracts will be structured around the State Fiscal Year (July-June) and will be pro-rated accordingly based on when you sign up. The sooner you sign up, the longer you will enjoy the full 2 or 3 year promotional benefit. Contracts must be signed in advance and payments are due annually.

Please [contact us](#) if you have questions about pricing and promotions.

**Purchase by the subscriber \_\_\_\_\_mailboxes per box \$\_\_\_\_\_ per year per mailbox**

## **Exhibit B**

### **Business Associate Agreement**

Agency agrees that it hereby enters into a Business Associate Agreement with Subscriber (as defined and required by the Health Information Portability and Accountability Act (“HIPAA”)). References in the Business Associate Agreement herein to “Provider” shall refer to the Subscriber and/or the person or entity that is a Covered Entity (as defined by HIPAA) with respect to the information disclosed by means of the ILHIE. References in the Business Associate Agreement herein to “Agency” shall mean State of Illinois Office of Health Information Technology for and on behalf of the Illinois Health Information Exchange Authority

#### **Marketing.**

1. Definition. Marketing is any communication by the Agency about a product or service that encourages the recipient of the communication (as defined herein, incorporated by reference and made a part hereof) to purchase or use the product or service, unless the communication is limited to:

- a. Refill reminders or otherwise communications about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by the covered entity in exchange for making the communication is reasonably related to the covered entity’s cost of making the communication
- b. For the following treatment and health care operations purposes, except where the covered entity receives financial remuneration in exchange for making the communication:
  - i) For treatment of an individual by a health care provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual;
  - ii) To describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits; or
  - iii) For case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

## 2. Authorization.

- a. The Agency must obtain an authorization for any use or disclosure of protected health information (as defined herein) for marketing, except if the communication is in the form of: face to face communication made by the Agency to the individual, or a promotional gift of nominal value provided by the Agency.
- b. If the marketing involves direct or indirect remuneration to the Agency from a third party, the authorization shall state that such remuneration is involved.

### **Termination for Breach of HIPAA Compliance Obligations.**

The Agency shall comply with the terms of the HIPAA Compliance Obligations set forth herein. Upon the Provider's learning of a material breach of the terms of the HIPAA Compliance Obligations set forth herein, the Provider shall:

1. Provide the Agency with an opportunity to cure the breach or end the violation, and terminate this Agreement if the Agency does not cure the breach or end the violation within the time specified by the Provider; or
2. Immediately terminate this Agreement if the Agency has breached a material term of the HIPAA Compliance Obligations and cure is not possible; or
3. Report the violation to the Secretary of the United States Department of Health and Human Services, if neither termination nor cure by the Agency is feasible.

### **Retention of HIPAA Records.**

The Agency shall maintain for a minimum of six (6) years documentation of the protected health information disclosed by the Agency, and all requests from individuals for access to records or amendment of records, pursuant to this Agreement, in accordance with 45 CFR § 164.530(j).

### **HIPAA Compliance Obligations.**

The Agency and the Provider shall comply with the terms of the HIPAA Compliance Obligations set forth herein. If the Agency materially breaches the terms of the HIPAA Compliance Obligations, the Provider may require a cure or terminate this Agreement, as provided herein.

#### **A. Definitions.**

1. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR § 164.501.

2. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
3. "PHI" means Protected Health Information, which shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by the Agency from or on behalf of the Provider.
4. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and 45 CFR Part 164 subparts A and E.
5. "Required by law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.

#### **B. Agency's Permitted Uses and Disclosures.**

1. Except as otherwise limited by this Agreement, the Agency may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Provider as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the Provider.
2. Except as otherwise limited by this Agreement, the Agency may use PHI for the proper management and administration of the Agency or to carry out the legal responsibilities of the Agency.
3. Except as otherwise limited by this Agreement, the Agency may disclose PHI for the proper management and administration of the Agency, provided that the disclosures are required by law, or the Agency obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI 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. The Agency shall require the person to whom the PHI was disclosed to notify the Agency of any instances of which the person is aware in which the confidentiality of the PHI has been breached.
4. Except as otherwise limited by this Agreement, the Agency may use PHI to provide data aggregation services to the Provider as permitted by 45 CFR § 164.504(e)(2)(i)(B).
5. The Agency may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j)(1).

#### **C. Limitations on Agency's Uses and Disclosures.**

The Agency shall:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;

2. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Mitigate, to the extent practicable, any harmful effect that is known to the Agency of a use or disclosure of PHI by the Agency in violation of the requirements of this Agreement;
4. Report to the Provider any use or disclosure of PHI not provided for by this Agreement of which the Agency becomes aware, and its risk assessment of the compromise according to the factors laid out in 45 CFR § 164.402 of the HIPAA regulations;
5. Ensure that any agents, including a subcontractor, to whom the Agency provides PHI received from the Provider or created or received by the Agency on behalf of the Provider, agree to the same restrictions and conditions that apply through this Agreement to the Agency with respect to such information;
6. Provide access to PHI in a Designated Record Set to the Provider or to another individual whom the Provider names, in order to meet the requirements of 45 CFR § 164.524, at the Provider's request, and in the time and manner specified by the Provider;
7. Make available PHI in a Designated Record Set for amendment and to incorporate any amendments to PHI in a Designated Record Set that the Provider directs or that the Agency agrees to pursuant to 45 CFR § 164.526 at the request of the Provider or an individual, and in a time and manner specified by the Provider;
8. Make the Agency's internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the Provider or created or received by the Agency on behalf of the Provider available to the Provider and to the Secretary of Health and Human Services for purposes of determining the Provider's compliance with the Privacy Rule;
9. Document disclosures of PHI and information related to disclosures of PHI as would be required for the Provider to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528;
10. Provide to the Provider or to an individual, in a time and manner agreed to by the Agency and the Provider, information collected in accordance with the terms of this Agreement to permit the Provider to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528;
11. Return or destroy all PHI received from the Provider or created or received by the Agency on behalf of the Provider that the Agency still maintains in any form, and to retain no copies of such PHI, upon termination of this Agreement for any reason. If such return or destruction is not feasible, the Agency shall provide the Provider with notice of such purposes that make return or destruction infeasible, and upon the parties' written agreement that return or destruction is infeasible, the Agency shall extend the protections of the Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

This provision shall apply equally to PHI that is in the possession of the Agency and to PHI that is in the possession of subcontractor or agents of the Agency.

**D. Provider Obligations.** The Provider shall:

1. Provide the Agency with the Provider's Notice of Privacy Practices and notify the Agency of any changes to said Notice;
2. Notify the Agency of any changes in or revocation of permission by an individual to use or disclose PHI, to the extent that such changes may affect the Agency's permitted or required uses and disclosures of PHI;
3. Notify the Agency of any restriction to the use or disclosure of PHI that the Provider had agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect the Agency's use or disclosure of PHI;
4. Not request that the Agency use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Provider.

**E. Breach Requirements.**

1. Sections 164.308, 164.310, 164.312 and 164.316 of title 45, Code of Federal Regulations, apply to the Agency in the same manner that such sections apply to the Provider. The Agency's obligations include but are not limited to the following:
  - a. Implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that the Agency creates, receives, maintains, or transmits on behalf of the covered entity as required by HIPAA;
  - b. Ensuring that any agent, including a sub the Agency, to whom the Agency provides such information, agrees to implement reasonable and appropriate safeguards to protect the data; and
  - c. Reporting to the Provider any security incident of which it becomes aware and conducting the necessary investigation and risk assessment according to 45 CFR § 164.402 to determine if PHI was compromised.
2. Privacy Obligations. To comply with the privacy obligations imposed by HIPAA, the Agency agrees to:
  - a. Abide by any Individual's request to restrict the disclosure of Protected Health Information consistent with the requirements of Section 13405(a) of the HITECH Act;
  - b. Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Agreement;

- c. Report to the Provider any use or disclosure of the information not provided for by the Underlying Agreement of which the Agency becomes aware;
- d. Ensure that any agents, including a sub the Agency, to whom the Agency provides Protected Health Information received from the Provider or created or received by the Agency on behalf of the Provider, agrees to the same restrictions and conditions that apply to the Agency with respect to such information;
- e. Make available to the Provider within ten (10) calendar days Protected Health Information to comply with an Individual's right of access to their Protected Health Information in compliance with 45 C.F.R. § 164.524 and Section 13405(f) of the HITECH Act;
- f. Make available to the Provider within fifteen (15) calendar days Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 C.F.R. § 164.526;
- g. Make available to the Provider within fifteen (15) calendar days the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528 and Section 13405(c) of the HITECH Act;
- h. To the extent practicable, conduct a risk assessment on the compromise of PHI according to 45 CFR § 164.402 and mitigate any harmful effects that are known to the Agency of a use or disclosure of Protected Health Information or a Breach of Unsecured Protected Health Information in violation of this Agreement;
- i. Use and disclose an Individual's Protected Health Information only if such use or disclosure is in compliance with each and every applicable requirement of 45 C.F.R. § 164.504(e);
- j. Refrain from exchanging any Protected Health Information with any entity of which the Agency knows of a pattern of activity or practice that constitutes a material breach or violation of HIPAA;
- k. To comply with Section 13405(b) of the HITECH Act when using, disclosing, or requesting Protected Health Information in relation to this Agreement by limiting disclosures as required by HIPAA.

3. Breach Notification. In the event that the Agency discovers a Breach of Unsecured Protected Health Information, the Agency agrees to take the following measures within 10 calendar days after the Agency first becomes aware of the incident:

- a. To notify, in written form, the Provider and all Other Subscribers of any incident involving the acquisition, access, use or disclosure of Unsecured Protected Health Information in a manner not permitted under 45 C.F.R. parts D and E. Such notice by the Agency shall be provided after the Agency first becomes aware of the incident, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this provision, the Agency must notify the Provider of any such

incident within the above timeframe even if the Agency has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA. The Agency is deemed to have become aware of the Breach as of the first day on which such Breach is known or reasonably should have been known to such entity or associate of the Agency, including any person other than the individual committing the Breach, that is an employee, officer or other agent of the Agency or an associate of the Agency;

b. To include the names of the Individuals whose Unsecured Protected Health Information has been, or is reasonably believed to have been, the subject of a Breach;

c. To include documentation of the risk assessment of the Breach using the factors laid out in 45 CFR § 164.402 of the HIPAA regulations; and,

d. To include for the Provider a sample copy of the notice that was used to inform individuals about the breach.

4. Notification Duty. It is the Agency's duty to provide the Breach notification to the affected individuals unless Provider agrees to provide the Breach notification.

5. Costs. The Agency assumes all costs for providing Breach notification unless Provider agrees to assume any costs.

6. Security Rule Compliance. The Agency shall comply with the Security Rule's administrative, physical and technical safeguard requirements. As part of compliance with the Security Rule, the Agency shall develop and implement written security policies and procedures with respect to the electronic PHI they handle. By signing this Agreement, the Agency assures and acknowledges compliance with the requirements of HITECH including meeting the administrative, physical and technical safeguard requirements of the HIPAA Security Rule. (45 CFR Part 160, 162, 164.) The Agency also assures and acknowledges that the electronic PHI they transmit is encrypted and that it will adopt internal procedures for reporting breaches and mitigating potential damages.

**F. Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the Provider to comply with the Privacy Rule.

Each party has caused this Business Associate Agreement to be signed by a duly authorized representative below:

**STATE OF ILLINOIS OFFICE OF HEALTH  
INFORMATION TECHNOLOGY FOR AND  
ON BEHALF OF THE ILLINOIS HEALTH  
INFORMATION EXCHANGE AUTHORITY**

**SUBSCRIBER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

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

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