

## ILHIE PUBLIC HEALTH NODE CONDUIT AGREEMENT

This Illinois Health Information Exchange Public Health Node Conduit Agreement (“Agreement”) is made as of \_\_\_\_\_, 201\_ (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 the undersigned person or entity identified below as the “Subscriber”. Agency and the Subscriber may be referred to herein as a “Party” or collectively as “Parties”.

### RECITALS

**WHEREAS**, Subscriber wishes to comply with one or more of the State of Illinois’ public health reporting requirements, and potentially participate in the health information technology incentives available from the federal government under the Medicare and Medicaid programs for Meaningful Use of electronic medical record systems;

**WHEREAS**, in order to meet Stage 2 Meaningful Use requirements, Eligible Professionals and Eligible Hospitals must achieve one of the following public health reporting options: (i) submit electronic data to an immunization information registry; (ii) submit reportable labs results to a public health authority (hospitals only); or (iii) submit syndromic surveillance data to a public health authority (collectively “Public Health Reporting”);

**WHEREAS**, the Illinois Department of Public Health (“IDPH”) is the State of Illinois’ public health authority, responsible for disease reporting, surveillance and prevention efforts for protecting the health of the public, including the collection of patient health information from hospitals and healthcare providers (“Reporting Entities”) regarding immunizations (principally through the I-CARE reporting system), electronic lab reporting (principally through the I-NEDSS reporting system) and syndromic surveillance (principally through the federal Centers for Disease Control BioSense reporting system);

**WHEREAS**, the enabling legislation of the Illinois Health Information Exchange Authority provides for the collection of health information from healthcare providers for Public Health Reporting purposes (20 IL 3860/20 (11) and IDPH has designated the Illinois Health Information Exchange (“ILHIE”) as the primary conduit through which data can be submitted to IDPH or its designated agent via the Public Health Node (PHN) which serves as the connection point with IDPH and/or its designated agent for certain Public Health Reporting purposes, including immunization reporting, laboratory reporting, and syndromic surveillance reporting;

**WHEREAS**, ILHIE has established a connection to the PHN to act as a conduit for purposes of transmitting public health data of Reporting Entities for Public Health Reporting (the “Data”), without requiring regular or routine access to the Data transmitted through the ILHIE;

**WHEREAS**, the Subscriber is a Reporting Entity and wishes to establish connectivity to the ILHIE to enable submission of Data to the PHN for certain Public Health Reporting purposes;

**WHEREAS**, Agency wishes to provide the ILHIE services to enable the electronic transmission of Subscriber's Data to the PHN (the "Conduit Solution") to the Subscriber on the terms and conditions set forth herein;

**NOW THEREFORE**, for good and valuable consideration, the Parties agree as follows:

## **I. ILHIE Conduit Solution**

### **1. Services**

Agency will give Subscriber access to ILHIE in accordance with this Agreement. Provider's Data will be transmitted through the ILHIE to IDPH or its designated agent. On receipt by IDPH or its designated agent, the Data may be modified by IDPH or its designated agent to satisfy Public Health Reporting requirements. Agency will not access the data on a routine basis, but will merely establish the connection to the PHN using the ILHIE. Agency will not store any data on behalf of Subscriber, other than temporary storage, incident to the transmission of data through the ILHIE.

### **2. Onboarding Documents**

The Agency will provide Subscriber access to the computing environment of the ILHIE to enable the electronic transmission of Subscriber's Data to the PHN. The onboarding of Subscriber will require Subscriber's execution of one or more of the following additional documents:

1. In connection with the submission of Subscriber immunization Data, Subscriber has entered or will complete the "Provider Site Enrollment Form" for access to the Immunization Data Registry (Registry) and will require each individual accessing the Registry on behalf of Subscriber to complete the "Individual User Agreement and Confidentiality Statement" as required by IDPH.
2. In the event Subscriber wishes to utilize ILHIE Direct Secure Messaging for transmission of Data, Subscriber has registered or will register for an ILHIE Direct address, and has entered or will enter into a "Subscription Agreement".

### **3. ILHIE Conduit Solution Technical Requirements**

Agency shall establish the technical requirements and procedures for connectivity of Subscriber to the ILHIE consistent with one or more national standards for data exchange and connectivity of electronic medical record systems certified for Meaningful Use; technical requirements and procedures may be changed from time to time. It is the responsibility of the Subscriber to review the ILHIE requirements on an ongoing basis and to ensure the Subscriber's continued compliance with those requirements.

The ILHIE shall receive Data in all of the formats currently accepted by the PHN, including CDAs, HL7 version 3, any version of HL7 version 2, as well as comma separated value files, tab delimited files and Excel files; the ILHIE shall accept Data sent by all transport methods currently accepted by the PHN, including virtual private network (VPN), secure file transfer protocol (SFTP), secure Direct messaging, and web services. Agency's assistance shall not extend to the development, furnishing or implementation by Agency of any technology that may need to be deployed or utilized by the Subscriber to provide the necessary level of interoperability between the Subscriber's electronic medical record system and the ILHIE, including broadband connectivity, hardware, software, program interfaces, middleware, licenses or other intellectual property rights.

#### **4. ILHIE Conduit Solution Financial Requirements**

Unless otherwise expressly provided in Exhibit A to this Agreement, during the Term (as defined below) of this Agreement the ILHIE Conduit Solution will be provided without charge.

#### **5. Protection of Subscriber Data**

Agency shall comply with all relevant state and federal law regarding the privacy and security of all Subscriber Data. Subject to such state and federal law, Agency shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data.

#### **6. Disclaimers**

Except as expressly stated in this section 6, all services are provided on an 'as is as available' basis. Agency, IDPH, their 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, IDPH, their 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 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 services and its data. Accordingly, Agency, IDPH, their 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 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 services and for conclusions drawn from such use. Agency, IDPH, their 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 services and any third-party products, services, software or web sites.

To the fullest extent permitted by law, Agency, IDPH, their 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, IDPH, their 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.

## **7. Information Regarding Additional ILHIE Services**

Subscriber agrees that information obtained by the Agency regarding the Subscriber may be used to provide Subscriber information regarding additional ILHIE services that the Agency may from time to time make generally available. Information obtained by the Agency regarding the Subscriber may be incorporated into ILHIE directories which may be provided by the Agency for use by third parties, including in connection with the participation of ILHIE in the National Health Information Network (NwHIN) Exchange and other inter-state data sharing network arrangements.

## **8. Term and Termination**

- a. Term: This Agreement shall commence upon full execution of by the Parties and shall continue until otherwise terminated by the Parties as set forth below.
- b. Termination:
  - i. This Agreement may be terminated by either Party for any or no reason upon thirty (30) days' prior written notice to the other Party.
  - ii. In the event either Party breaches this Agreement and fails to cure such breach within ten (10) days' written notice thereof from the non-breaching Party, the

non-breaching Party may terminate this Agreement upon written notice to the breaching Party.

## **II. Miscellaneous**

### **1. Agreement's Compliance with Laws and Regulations.**

The Subscriber intends and in good faith believes that this Agreement complies with all federal, State and local laws. If any provision of this Agreement is declared void by a court or arbitrator, or rendered invalid by any law or regulation, and if such provision is necessary to effectuate the purposes of this Agreement, the Subscriber agrees to attempt to renegotiate in good faith the Agreement to comply with such law(s).

### **2. Notices.**

Any notice or other communication required under this Agreement shall be in writing and sent to such address as the Subscriber shall designate in writing. Notices or communications 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, provided that notice of default or termination shall be sent by registered or certified mail; (b) within five (5) days if sent by established courier service; or (c) when received, if personally delivered.

### **3. Governing Law.**

In the event of any dispute arising out of this Agreement: the Subscriber receiving and providing Protected Health 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.

### **4. Amendment.**

- a. Except as provided in Section 4(b), this Agreement may not be modified, altered, or amended except by written instrument duly executed by Subscriber and Agency.
- b. Agency reserves the right to amend this agreement without the Subscriber's consent by providing written notice of such amendment for the following purposes:(1) as required by federal or state law; (2) for the mitigation of privacy and security matters; and, (3) non-material changes that do not alter the material rights and obligations of the Subscriber or Agency under this Agreement.
  - i. At least thirty (30) days advance written notice shall be given for federal or state law, or for privacy and security mitigation amendments, except if the change in applicable law is effective sooner or the circumstances require less notice to address urgent regulatory and privacy and security matters.

- ii. For non-material amendments, Agency shall provide notice to the Subscriber in the form of a revised Agreement and allow the Subscriber to make objections within five (5) days of receipt of the revised Agreement.

**5. 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 Agency. Any such assignment without Agency'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, Agency shall be authorized without further consent of Subscriber 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/).

**6. Waiver.**

No failure or delay by Subscriber or Agency in exercising its rights under this Agreement shall operate as a waiver of such rights or estop enforcement of those rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach or estop enforcement of those rights.

**7. Integration.**

Subject to Section I.2 above (Onboarding Documents), this Agreement sets forth the entire and only agreement between the Subscriber and Agency relative to the subject matter of this Agreement. Any representations, promise, or condition, whether oral or written, not incorporated in this Agreement shall not be binding upon the Subscriber.

**8. Incorporation by Reference.**

All exhibits attached to this Agreement are incorporated by reference and made part of this Agreement as if those exhibits were set forth in the text of this Agreement.

**9. Severability.**

If any portion of this Agreement shall for any reason be invalid or unenforceable, such portion shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining portions shall remain valid and enforceable and in full force and effect.

**10. Relationship of Parties.**

Nothing contained in this Agreement shall constitute, or be construed to create, a partnership, joint venture, agency or any other relationship other than that of independent contractors to this Agreement.

**11. Third-Party Beneficiaries.**

This Agreement does not and will not create in any natural person, corporation, partnership or other organization other than the Subscriber any benefits or rights, and this Agreement will be effective only as to the Subscriber and its successors and permitted assigns.

**12. Force Majeure.**

Notwithstanding any provisions of this Agreement to the contrary, in the event of a disruption, delay or inability to complete the requirements of this Agreement due in whole or in part to any cause beyond the reasonable control of such party or its contractors, agents or suppliers, including but not limited to utility or transmission failures, failure of phone or data transmission lines or phone or data transmission equipment, power failure, strikes or other labor disturbances, acts of God, floods, fire, natural or other disasters, sabotage, acts of war or terror or other similar events out of the control of the Party, such Party shall not be considered in breach of this Agreement. To the extent that any performance by Agency under this Agreement depends on the receipt of Federal or State funds, Agency’s failure to receive such Federal or State funds shall also constitute a force majeure event.

**13. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which will be considered an original as against the Party whose signature appears thereon, but all of which taken together will constitute one and the same instrument.

**14. Authority to Sign.**

The Subscriber warrants that they have the capacity to enter into and perform the obligations under this Agreement and all activities contemplated in the Agreement, and all other corporate and other actions required to authorize it to enter into and perform this Agreement were properly taken.

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

**STATE OF ILLINOIS OFFICE OF HEALTH    SUBSCRIBER**  
**INFORMATION TECHNOLOGY**

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

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

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

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

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

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

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

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

Exhibit A: Additional Terms

Financial Commitments of Subscriber: [none]