

STATE OF ILLINOIS

Office of Health Information Technology



REQUEST FOR GRANT APPLICATIONS FOR HEALTH INFORMATION EXCHANGE WHITE SPACE PROGRAM

September 17, 2012

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1. INTRODUCTION

- 1.1 PURPOSE:** The Illinois Office of Health Information Technology (OHIT) is seeking Applicants to assist “white space” health care entities, those delivering health care in underserved practice settings and geographic areas or in practice settings underrepresented among electronic health record (EHR) users, with connecting to health information exchange (HIE) services.

The goal of this grant program is to accelerate the connection of providers delivering health care services in practice settings and geographic areas currently underserved by HIE services to obtain and use HIE services, including those of the Illinois Health Information Exchange (ILHIE) to improve patient care and health outcomes. This grant is to be used to fulfill the requirements of the grant award to Illinois by the Office of the National Coordinator for Health Information Technology, U.S. Department of Health and Human Services, award # 90HT0007/01.

Grants will be awarded to eligible Applicants that submit proposals for one of two approaches: 1) connecting white space health care entities to an HIE service/solution that also connects to the ILHIE network; or 2) connecting white space entities directly to the ILHIE network.

Proposals must include only one of the two approaches and Applicants may not submit more than one proposal. The HIE White Space Grant Program encourages and will give priority consideration to applications that include multiple organizations working together to achieve grant deliverables.

“Health information exchange service” as defined in this request for grant applications is the secure electronic exchange of health information from certified EHR systems and structured health data in accordance with nationally recognized technical standards.¹

“White space” health care entities are defined as follows: physician practices with 10 or fewer physicians; community health centers/federally qualified health centers; rural health clinics; long term care facilities; outpatient behavioral health providers; critical access hospitals; and dental practices (see Section 2. Definitions).

Grantees awarded funding under the HIE White Space Grant Program and participating white space entities will be connected to the ILHIE in a pilot engagement, that will not obligate them to pay user fees to the ILHIE as a condition of participation in the grant program. Grantees and white space entities may, however, elect to enter into a service agreement and begin paying user fees to the ILHIE at any time during or subsequent to the grant period.

- 1.2 BACKGROUND:** Investing in health information technology (HIT), particularly HIE between providers and the adoption of certified EHR, has long been recognized as a powerful strategy to enhance patient care, improve healthcare outcomes, reduce medical errors and control the costs of healthcare.

¹ See the Office of the National Coordinator, Security and Interoperability Framework Wiki: <http://wiki.siframework.org>; and Direct Project Wiki: <http://wiki.directproject.org>.

In 2010, Illinois was awarded \$18.8 million by the Office of the National Coordinator for Health Information Technology, U.S. Department of Health and Human Services through the State HIE Cooperative Agreement Program. The purpose of this funding is to develop HIE infrastructure statewide to accelerate the adoption and Meaningful Use of EHR by Illinois health care providers and hospitals, improving patient care and health outcomes.

To lead that effort, Governor Pat Quinn established the Office of Health Information Technology (OHIT) through Executive Order and Illinois passed the Health Information Exchange and Technology Act, establishing a long-term governance structure for its statewide HIE, the ILHIE. Under State statute, the ILHIE was established as a statewide network to transport health information, medical records and other health data in a secure environment for the benefit of patient care, patient safety, reduction of duplicative medical tests, reduction of administrative costs, and any other related benefits. The ILHIE is also tasked with ensuring that all Eligible Professionals and Eligible Hospitals in Illinois have at least one option to meet the electronic exchange requirements for Meaningful Use under the Medicare and Medicaid EHR incentive programs.²

As the adoption and Meaningful Use of EHR continues to become more widespread throughout the state and as health information technology vendors develop and enhance their offerings in accordance with national standards, health care providers and hospitals are expected to have multiple HIE service options available to them offering a wide variety of functionality. These include: EHR vendor-developed HIE solutions, which may be implemented and offered through a private enterprise, such as an integrated delivery network; other privately-operated HIEs; regionally-based HIEs open to multiple, unaffiliated providers within a specific geographic area; and HIEs based in other states. In order to promote maximum interoperability and ensure that vital health data is able to follow patients where they seek care, the ILHIE network architecture is designed to ensure that providers who are connected to multiple types of HIE services can also connect to the ILHIE.

Through ongoing assessment of the statewide landscape for HIE, OHIT has determined that although many health care providers and hospitals are in the process of connecting to or procuring a variety of HIE services, there are a significant number of health care entities and providers in practice settings and geographic areas that are currently underserved by HIE services or face specific barriers to obtaining HIE services. These underserved “white space” entities need particular technical assistance, training and foundational support to connect to an HIE. Their participation in the ILHIE is critical to the success of statewide efforts to increase effective care coordination and improve patient health outcomes.

As new models of patient care emerge that focus on care coordination among multiple health care entities, it is critical to the patients served by these white

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<https://www.cms.gov/apps/media/press/factsheet.asp?Counter=4440&intNumPerPage=10&checkDate=&checkKey=&srchType=1&numDays=3500&srchOpt=0&srchData=&keywordType=All&chkNewsType=6&intPage=&showAll=&pYear=&year=&desc=&cboOrder=date>

space entities that they have access to the HIE services needed to exchange relevant health information. It is the intent of this white space grant program to increase the number of white space entities that are able to securely exchange data and therefore, improve their ability to coordinate patient care.

2. DEFINITIONS: Whenever used in this RGA, Agreement, or amendment, including attachments to the RGA or Agreement, the following terms will have the meanings defined below. Any objections or questions regarding the definitions should be raised with OHIT during the RGA process.

Agreement: The planning grant contract entered into between the State and the grant awardees.

ARRA: American Recovery and Reinvestment Act of 2009.

Certified EHR (EHR): An EHR certified by an Authorized Testing and Certification Body authorized by the Office of the National Coordinator for Health Information Technology to test and certify that certain types of electronic health record technology are compliant with the standards, implementation specifications, and certification criteria adopted by the U.S. Department of Health and Human Services Secretary.

Community Health Center: Health centers that are community-based and patient-directed organizations that serve populations with limited access to health care as defined by HRSA.

Critical Access Hospital (CAH): A rural community hospital that receives cost-based reimbursement. To be designated a CAH a rural hospital must meet defined criteria that are outlined in the Conditions of Participation 42CFR485 and subsequent legislative refinements to the program through the BBRA, BIPA, the Medicare Modernization Act, the MIPPA, and the PPACA.

Days: "Days" shall mean calendar days; "business day" shall mean a weekday (Monday through Friday), excepting State holidays, between the hours of 8:30 a.m. Central Time and 5:00 p.m. Central Time.

Eligible Illinois-licensed health care provider: Physician, advanced practice nurse, registered nurse, physician assistant, dentist or licensed clinical social worker.

EHR: Electronic health records system.

EMR: Electronic medical record.

Federally Qualified Health Center (FQHC): FQHCs are community-based organizations that provide comprehensive primary care and preventive care, including health, oral, and mental health/substance abuse services to persons of all ages, regardless of their ability to pay or health insurance status.

Grant Application: "Grant Application" and "Proposal" are used interchangeably.

Grantee: An Applicant who has been awarded a grant pursuant to this RGA.

HIE: health information exchange.

HIE Service: The secure electronic exchange of health information from certified electronic health records systems and structured health data in accordance with nationally recognized technical standards.

IHE®: Integrating the Healthcare Enterprise

ILHIE: Illinois Health Information Exchange network and services governed by the Illinois Health Information Exchange Authority.

ILHIE Direct: A secure messaging solution enabling providers, and staff members involved in patient care, to send patient health information via the Internet in a secure and encrypted format to other providers with an ILHIE Direct address.

LOINC®: Logical Observation Identifiers Names and Codes.

Long Term Care Facility: Facility as defined under the Illinois Nursing Home Care Act, 210 ILCS 45.

NIST: National Institute of Standards and Technology.

OHIT: Illinois Office of Health Information Technology.

Office of the National Coordinator for Health Information Technology/ONC: The Office of the National Coordinator for Health Information Technology provides counsel to the Secretary of HHS and departmental leadership for the development and nationwide implementation of an interoperable health information technology infrastructure.

Parties: The State of Illinois and successful grant awardees.

Public assistance or related function: A function in which a program of essential medical care and rehabilitative services for persons receiving maintenance under the Public Aid Code (305 ILCS 5/5-1 et al) and for other persons who are unable, because of inadequate resources, to meet their essential medical needs.

Proposal: "Grant Application" and "Proposal" are used interchangeably.

RGA: Request for Grant Applications.

Rural Health Clinic: Located in 1) a non-urban area (as defined by the U.S. Census Bureau); 2) an area designated by HRSA as a Federally designated or certified shortage areas; and meet certain provider and service provision requirements to receive certification as a Rural Health Clinic as defined under the Rural Health Clinic program to receive special Medicare and Medicaid reimbursements.

SAML: Security Assertion Markup Language.

Service Level Agreement: An agreement defined on a standard set of metrics which are directly tied to the performance and availability of the HIE system in production.

SNOMED: Clinical healthcare terminology maintained by the International Health Terminology Standard Development Organisation

State: State of Illinois.

State Fiscal Year: The Illinois State Fiscal Year begins on July 1 and ends on June 30 of the following year.

Unaffiliated White Space Entities: White space health care entities as defined below that do not share common ownership or control, through corporate governance or contractual arrangements, or that control or are controlled by another entity in the group.

White Space Health Care Entity: A provider or practice setting delivering health care services in underserved communities and geographic areas or underrepresented among EHR users. White space entities include the following: practices with 10 or fewer physicians; community health centers/federally qualified health centers; rural health clinics; long term care facilities; outpatient behavioral health providers; critical access hospitals; and dental practices.

3. KEY INFORMATION

3.1 SUBMISSION DEADLINE AND GRANT APPLICATIONS TIMETABLE

3.1.1 Issue RGA: September 17, 2012

3.1.2 Questions Due from Applicant: All inquiries regarding the RGA are to be submitted via email to Cory Verblen at cory.verblen@illinois.gov, no later than October 15, 2012 by 3:00 p.m. Central Time. Questions submitted after October 15, 2012 at 3:00 p.m. will be answered at the discretion of OHIT.

Phone inquiries will not be answered. OHIT will do its best, but cannot guarantee, that it will answer all inquiries within 2 business days of receipt. All responses to inquiries will be posted and available to all Applicants.

3.1.3 Due Date for Applications: All applications must be received by email by OHIT by October 26, 2012 at 3:00 p.m. Central Time.

3.1.4 Late submissions will not be accepted.

3.2 OPENING: The State will open all grant applications that are submitted on or before October 26, 2012 in a proper and timely manner and will record the names and other information necessary to properly record receipt of the grant applications. Each proposing entity will receive a return receipt email.

3.3 AWARD AND FUNDING: An award will be made to the Applicants who successfully meet the criteria of the RGA as determined by the scoring mechanism outlined in Section 7. Only one grant per Applicant may be awarded. Grant funds will be allocated and all Grant Agreements are expected to be in place by December 15, 2012. It is anticipated that grant funds will be disbursed beginning December 15, 2012.

3.4 DISCLOSURE OF GRANT APPLICATION CONTENTS: Applicant proposals become the property of the State. Applicant proposals and late submissions will not be returned. Proposals will be available to the public under the Illinois Freedom of Information Act (FOIA) (5 ILCS 140) and other applicable laws and rules, unless the Applicant requests in the Proposal that OHIT treats certain information as exempt. OHIT will not honor requests to exempt entire Proposals. The Applicant must show the specific grounds in FOIA or other law or rule that support exempt treatment. Regardless, OHIT will disclose the successful Applicants' names and the substance of the Proposals. If the Applicant requests exempt treatment, they must submit an additional copy of the Proposal with exempt information deleted. This copy must indicate the general nature of the material removed and shall retain as much of the Proposal as possible. The Applicant will be responsible for any costs or damages associated with OHIT defending the request for exempt treatment. The Applicant agrees that the State may copy the Proposal to facilitate evaluation, or to respond to requests for public records. The Applicant warrants that such copying will not violate the rights of any third party.

4. GRANT REQUIREMENTS

4.1 Applicant must meet the following eligibility criteria and grant proposal must include a narrative specifying the criteria are met:

4.1.1 Applicant must be an existing Illinois-based formal or incorporated organization providing not-for-profit services or functions related to health care, have experience with health information technology, and be classified as a 501(c)3.

4.1.2 Applicant must have submitted a Letter of Intent for these funds on or before September 14, 2012 at 3:00 p.m. Central Time.

4.1.3 Applicant must commit at least 10% of total funds requested in matching funds and in-kind contributions and reflect the matching funds and in-kind contributions in the total proposed project budget.

4.1.4 Proposal must detail plans to connect a minimum of 50 eligible Illinois-licensed health care providers in a minimum of five (5) unaffiliated Illinois white space entities as defined herein. Entities already connected to an Applicant's HIE service/solution or the ILHIE network at the time of application do not count toward the minimum, but can be included as participants in the proposal.

4.1.5 Applicant must identify and describe any organizations with which you will partner to execute your proposal. Include the names, titles and organizational affiliations of individuals who will have a role in the proposal.

4.1.5.1 Priority consideration will be given to applications that include multiple organizations working together to achieve grant deliverables.

4.1.6 Applicant must identify all licensed health care providers and all unaffiliated white space entities that will be connected to HIE services through the project.

4.1.7 Applicant must identify all vendors supplying HIE and other services included in the proposal.

4.1.8 Applicants must provide a detailed summary of the Applicant organization and all relevant partner organization's experience in health information technology and work with health care providers. Include specific services and programs offered and identify their outcomes.

4.1.9 Applicant must ensure that all white space entities included in the proposal are connected to the ILHIE network within one year of grant award date; connection to the ILHIE network is defined as full operational integration with the ILHIE master directories and other statewide services.³

4.1.9.1 Some white space entities (e.g. behavioral health providers) may be restricted by law from integrating fully into all statewide ILHIE services. Grantees will not be required to connect any such entities to any ILHIE services that by law they are restricted from participating in. Proposals that include such providers must, however, clearly identify those entities and describe the scope of HIE services to which they will be connected.

4.1.10 Applicant must propose a project that i) provides Direct-compliant HIE services to white space entities or utilize the ILHIE network to ensure that white space entities have Direct-compliant HIE services; ii) assists eligible professionals and hospitals in meeting Meaningful Use requirements for care summary exchange included in the Meaningful Use criteria for participation in the Medicare and Medicaid EHR incentive programs;⁴ iii) demonstrates the Applicant's or proposal partner's experience providing technical assistance and

³ <http://www2.illinois.gov/gov/HIE/Pages/TechArc.aspx>.

⁴ http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/downloads/8_Transition_of_Care_Summary.pdf

training to health care providers to implement or use health information technology, including EHR and HIE services/solutions.

4.1.11 If an Applicant does not plan to utilize ILHIE network services for initial connectivity of white space entities, the Applicant must describe the operational HIE service/solution that is in production (test environment not eligible) at the time of application and its ability to provide HIE service to connected white space entities throughout the grant period.

4.1.12 If the Applicant does not propose to utilize ILHIE network service for initial connectivity of white space entities (i.e. Applicant proposes Approach #1 on page three of this RGA), the Applicant must provide Direct-compliant HIE services to all white space entities identified in its proposal within six months of the notice of grant award date. The Direct-compliant HIE service must be able to interface with the ILHIE Direct Health Information Service Provider and the proposal must detail how that interface will be established.

4.1.12.1 Applicant HIE service must adhere to NIST level 3 security for user authentication⁵ and describe their ability to do so.

4.1.12.2 Applicant must acknowledge their ability to provide HIE services other than Direct in the proposal and must adhere to the following national technical standards:

- a. IHE PIX/PDQ
- b. IHE XDS.b
- c. C32 and its extensions as they are defined⁶
- d. LOINC lab coding
- e. SNOMED coding for labs
- f. ICD 9 codes
- g. CPT codes
- h. SAML security token passing

4.1.12.3 If the Applicant's HIE service cannot meet all of the standards listed herein at the time of application, their proposal must detail the Applicant's plans and timelines to achieve adherence to them.

4.1.13 For proposals pursuing Approach #1 Only (non-ILHIE network for initial white space entity HIE connectivity): Applicant must describe their plan to connect a minimum of 50 eligible Illinois-licensed health care providers in a minimum of five (5) unaffiliated white space entities to HIE service/solution within six months of the notice of grant award date; AND Applicant must describe their plan to connect that HIE service/solution to the ILHIE network within one year of the notice of award date.

4.1.14 For proposals pursuing Approach #2 Only (ILHIE network for white space entity HIE connectivity): Applicant must describe their plan to connect a minimum of 50 eligible Illinois-licensed health care providers in a minimum of five

⁵ <http://www.itl.nist.gov/lab/bulletns/bltnaug04.htm>

⁶ http://www.hitsp.org/ConstructSet_Details.aspx?&PrefixAlpha=4&PrefixNumeric=32

(5) unaffiliated white space entities to the ILHIE network within one year of the notice of award date.

4.1.15 Applicant must have Service Levels Agreements with all HIE service providers included in their proposal and must provide attestation for executed contract(s) with these HIE service providers.

4.1.16 Applicants pursuing Approach #1 must clearly identify and describe the HIE service/solution to be used, verify that it is Direct-compliant or will be Direct compliant by the time they will begin connecting, and describe how they will connect the licensed providers and the white space entities in the proposal to the identified HIE service/solution within six months of the notice of award date.

4.1.17 Applicants pursuing Approach #1 must describe how the identified HIE service/solution will be connected to the ILHIE within one year of the notice of award date.

4.1.18 Applicants pursuing Approach #2 must describe the licensed providers and the white space entities in their proposal will be connected to the ILHIE within one year of notice of award date.

4.1.19 Applicant must clearly describe their plan to assist white space entities included in the proposal to utilize and/or increase their utilization of HIE services in the delivery of care. Include strategies for technical assistance, training and HIE use cases that will be pursued.

4.1.20 Applicants must submit letters of participation from all organizations that are partners to the proposal and from all white space entities that are included in the proposal. The letters should clearly identify how the organization will participate in and support the proposal. Applicants may also include letters of support from other organizations not partner to, but supporting the proposal.

4.2 STATEMENT OF WORK AND PRELIMINARY WORK PLAN:

4.2.1 Each application must include a Statement of Work narrative which generally describes the plan, processes and activities that will be undertaken to complete the proposal, coordinate the efforts of all partners and vendors included the proposal and report on accomplishments and challenges experienced during the grant period. The narrative should include the following:

4.2.1.1 The strategies and specific activities that will be utilized to connect white space entities to HIE services, utilize HIE services in the delivery of care and facilitate patient care coordination.

4.2.1.2 The approximate geographic location of all white space entities included in the proposal, proposed methods of communication and strategies for providing technical assistance to these entities.

4.2.1.3 A project management structure for the implementation of the project and identification of the decision-making process to guide implementation of the project.

4.2.1.4 A preliminary organizational chart for the project.

4.2.1.5 The Applicant's plan to continue participation in the ILHIE after the conclusion of the grant period.

4.2.2 In addition to the Statement of Work, a preliminary Work Plan must also be submitted delineating major project deliverables including objectives, concomitant activities, personnel, other resources and timelines projected for completion of planning phase. Grantees will be required to submit an updated Work Plan within 30 days of the notice of award date. The updated Work Plan shall serve as the basis for monitoring the progress of each Grantee.

4.2.3 Applicant may make modifications to the Work Plan, including the composition and timeline in which providers connect to the Grantees HIE service and/or ILHIE, only with the approval of OHIT.

4.3 BUDGET NARRATIVE AND SUMMARY: A Budget Detail and Summary for the period of 12/15/12 – 12/15/13 must be submitted. Matching funds of 10% of total funds requested are required. Cash and in-kind contributions should be clearly delineated in the proposed budget. See Attachments B and C for formats to use for budget documents.

4.4 AGREEMENT: OHIT expects to contract based on the terms and conditions as set forth in the attached Sample Grant Agreement (Attachment D). Please note that most of the Grant Agreement provisions are required by law or policy and OHIT's ability to consider and accept changes proposed by the Applicant is very limited. Any proposed changes may be considered in the RGA evaluation.

4.4.1 Applicant must enter into a Grant Agreement with the State of Illinois within 15 days of notice of award date.

4.4.2 Applicant must enter into a data sharing agreement (Attachment E) with the ILHIE Authority within six months of notice of award date.

4.4.3 Pursuant to the State of Illinois legislative mandate to support businesses owned by women, minority males and disabled persons, if a grant proposal includes the purchasing of materials, equipment and/or professional services, the Applicant must agree to work with OHIT and the State of Illinois Business Enterprise Program to identify certified businesses for possible selection as vendors/suppliers.

5. PAYMENT MILESTONES, REPORTS AND DELIVERABLES TO BE INCLUDED IN QUARTERLY AND FINAL REPORTS

5.1 Proposals should reflect the following payment milestones for Grantees:

Milestone for Applicants proposing Approach #1	Percentage of total award
Execution of Grant Agreement between Grantee and OHIT	15%
Submission and OHIT approval of updated detailed Work Plan (required within 30 days of notice of award)	15%
Execution of data sharing agreement between Grantee and ILHIE Authority	20%
Connection of at least 50% of white space entities identified in Work Plan to HIE services	12.5%
Connection of all white space entities identified in Work Plan to HIE services	12.5%
Connection of all white space entities identified in Work Plan to the ILHIE	25%

Milestone for Applicants proposing Approach #2	Percentage of total award
Execution of Grant Agreement between Grantee and OHIT	15%
Submission and OHIT approval of updated detailed Work Plan (required within 30 days of notice of award)	15%
Connection of at least 25% of white space entities identified in Work Plan to the ILHIE	20%
Connection of at least 50% of white space entities identified in Work Plan to the ILHIE	20%
Connection of all white space entities identified in Work Plan to the ILHIE	30%

5.2 Applicants who are awarded grants must work to comply with the requests, decisions, and guidelines issued by OHIT after Grant Agreements have been fully executed by the Parties. All successful Applicants must be willing to share information with OHIT, which will, in OHIT’s sole determination, share appropriate information to support other projects around the State, as well as to contribute to the further development of the ILHIE. At a minimum, the successful Applicant must commit to providing quarterly progress reports (see Attachment F) and a final report to OHIT. A final report shall be submitted to OHIT by

December 31, 2013 unless otherwise agreed to by the Parties in the Agreement. These reports must detail at least the following:

- 5.2.1** Identification of white space entities connected to the ILHIE and if applicable, to the proposal's identified HIE service/solution
- 5.2.2** Description of how the connected entities are using HIE services in the delivery of care
- 5.2.3** Identification of successes and adoption of best practices.
- 5.2.4** Identification of obstacles, challenges and lessons learned.
- 5.2.5** In final report, identification of the extent to which the project achieved the following goals:
 - 5.2.5.1. Increased white space entity connectivity to HIE services
 - 5.2.5.2. Increased white space entity connectivity to the ILHIE network
 - 5.2.5.3 Increased white space entity and individual provider utilization of HIE services in routine delivery of care
 - 5.2.5.4. Increased number of providers able to meet Stage 1 and 2 Meaningful Use requirements for care summary exchange
 - 5.2.5.5 Increased number of providers able to use HIE to support participation in care coordination programs
- 5.2.6** Grantees must adhere to all reporting requirements mandated by the American Recovery and Reinvestment Act, detailed in Attachment A.

6. COMPONENTS OF GRANT SUBMISSION

6.1 A COMPLETE HIE WHITE SPACE GRANT PROPOSAL CONSISTS OF:

- 6.1.1 STATEMENT OF WORK AND PRELIMINARY WORK PLAN:** The Statement of Work and Preliminary Work Plan identified in section 4.2 must be completed and returned with the proposal as Attachment A.
- 6.1.2 BUDGET NARRATIVE:** The Budget Narrative identified in Attachment B must be completed and returned with the proposal.
- 6.1.3 BUDGET FORMAT:** The Budget Format identified in Attachment C must be completed and returned with the proposal.
- 6.1.4 PARTNER ORGANIZATION AND WHITE SPACE ENTITY LETTERS:** Letters as outlined in Section 4.1.20 must be provided with the Proposal.

6.2 PROPOSAL SUBMISSION FORMAT

- 6.2.1** Proposals should be prepared on single sided, white, 8.5 x 11-inch paper with at least a .75-inch margin. Proposals should be single spaced,

and use at least a 12 point font size. Proposals should be no more than twenty (20) pages, covering the Statement of Work, Preliminary Work Plan and Budget Narrative, and not including letters and other attachments.

6.2.2 Submissions must be made electronically to:

Mr. Cory Verblen
Communications Manager
Illinois Office of Health Information Technology
Office of the Governor
Email: cory.verblen@illinois.gov

7. HOW PROPOSALS WILL BE EVALUATED

7.1 In order to be eligible for a grant, an Applicant must earn a minimum of **400** points as determined by OHIT. Evaluation will be based on the following factors:

Weight		
1.	Responsiveness to Grant Requirements	100
2.	Relevant Experience	80
3.	Diversity and Level of Involvement of Partners	120
4.	Statement of Work & Preliminary Work Plan	200
5.	Budget Narrative and Budget Plan	100
TOTAL		600

7.2 The Director of the Illinois Office of Health Information Technology in furtherance of the public interest may in response to a good faith request from an entity to modify or waive any of the foregoing requirements.

ATTACHMENT A
REQUIREMENTS FOR THE USE OF FUNDS AUTHORIZED UNDER THE AMERICAN
RECOVERY AND REINVESTMENT ACT (ARRA)

ARRA REQUIREMENTS: Procurements under this contract might be made with American Recovery and Reinvestment Act of 2009 (“ARRA”) funds. As such, to the extent procurements are being made with ARRA funds, in addition to any other applicable federal laws, this contract is subject to all applicable requirements of ARRA, including but not limited to the following requirements and any additional requirements set out by the federal government, including any applicable funding agency guidance.

(a) **REVISIONS TO REQUIREMENTS**

The federal Government has not fully developed the implementing instructions of ARRA, particularly concerning specific procedural requirements for the new reporting requirements. The Vendor will be provided these details as they become available. Vendor acknowledges that this attachment may be revised pursuant to ongoing guidance from the relevant federal or State agency regarding requirements for ARRA funds. Vendor agrees to abide by any such revisions upon receipt of written notification from the State of the revisions, which will automatically become a material part of this attachment, without the necessity of either party executing any further instrument.

(b) **CONFLICTING REQUIREMENTS**

Vendor agrees that to the extent ARRA requirements conflict with State of Illinois requirements, the ARRA requirements shall control.

(c) **FALSE CLAIMS ACT**

Vendor agrees that it shall promptly refer to an appropriate federal Inspector General any credible evidence that a principal, employee, agent, subgrantee, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

(d) **ENFORCEABILITY**

Vendor agrees that if Vendor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

(e) **SEPARATE TRACKING AND REPORTING OF ARRA FUNDS**

Vendor agrees that ARRA funds may be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of ARRA and related guidance. For projects funded by other sources in addition to ARRA funds, Contractors must keep separate records for ARRA funds and must ensure those records comply with the requirements of the ARRA. No ARRA funds may be used for a purpose other than that of making payments for costs allowable under the ARRA.

(f) **SECTION 902, ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE**

Contracts awarded using ARRA funds must allow the U.S. Comptroller General and his or her representatives, with authority, to:

- 1) examine any records of the Vendor, of its subcontractors, or of any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- 2) interview any officer or employee of the Vendor, or of any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his or her representatives shall have the authority and rights provided under Section 902 of the ARRA, with respect to this contract which is funded, either in whole or in part, with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

(g) SECTION 1512, REPORTS ON USE OF FUNDS

Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain the information outlined below. Accordingly, Vendor agrees that not later than 5 days after the end of each calendar quarter, or more frequently as directed by the State, the Vendor shall submit a report to the State that contains:

- 1) The total amount of ARRA funds received by Vendor during the quarterly reporting period;
- 2) The amount of ARRA funds that were expended or obligated by Vendor during the quarterly reporting period;
- 3) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - a. the name of the project or activity;
 - b. a description of the project or activity;
 - c. an evaluation of the completion status of the project or activity;
 - d. an estimate of the number of jobs created and the number of jobs retained by the project or activity;
 - e. names and total compensation of each of the five most highly compensated officers of the Vendor for the calendar year in which the contract is awarded if—
 - i. In the Vendor's preceding fiscal year, the Vendor received—
 - (a) 80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (b) \$25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements .
- 4) For any subcontracts equal to or greater than \$25,000:
 - a. The name of the entity/subcontractor receiving the subaward;
 - b. The amount of the subaward;
 - c. The transaction type;

- d. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
- e. Federal program source;
- f. An award title descriptive of the purpose of each funding action;
- g. The location of the entity receiving the subaward;
- h. The primary performance location of the subaward, including the city, state, congressional district, and country;
- i. A unique identifier (DUNS Number) of the entity receiving the subaward and the parent entity of entity/subcontractor, should the entity be owned by another; and
- j. The names and total compensation of the five most highly compensated officers of the subcontractor if it received: 1) 80% or more of its annual gross revenues in federal awards; and 2) \$25M or more in annual gross revenue from federal awards.

5) For any subcontracts of less than \$25,000, the information required in Paragraph 4 above may be reported in the aggregate and requires the certification of an authorized officer of Vendor that the information contained in the report is accurate.

6) Any other information reasonably requested by the State or required by state or federal law or regulation.

(h) SECTION 1515(a), ACCESS OF FEDERAL OFFICES OF INSPECTOR GENERAL TO CERTAIN RECORDS AND EMPLOYEES

The Vendor is advised that representatives of federal inspector general offices have the authority to examine any record and interview any employee or officer of the Vendor, its subcontractors, or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of a federal inspector general office.

(i) SECTION 1553, PROTECTING STATE GOVERNMENT, LOCAL GOVERNMENT, AND CONTRACTOR WHISTLEBLOWERS

Employees of employers receiving federal funds may not be discharged, demoted, or otherwise discriminated against in retaliation for disclosing information that the employee reasonably believes is evidence of:

- 1) gross mismanagement of a contract or grant relating to federal funds;
- 2) a gross waste of federal funds;
- 3) a substantial and specific danger to public health or safety related to the implementation or use of federal funds;
- 4) an abuse of authority related to the implementation or use of federal funds; or
- 5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract).

The Vendor shall post notice of employees' rights and remedies for whistleblower protections provided under section 1553 of the ARRA. The Vendor shall include the substance of this clause, including this paragraph, in all subcontracts.

(j) SECTION 1604, PROHIBITION ON USE OF FUNDS

Vendor agrees that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pool, or any other item prohibited by ARRA.

(k) **SECTION 1605, BUY AMERICAN, USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS**

Vendor agrees that, in accordance with ARRA Section 1605, neither the Vendor nor its subcontractor will use funds appropriated or otherwise made available by ARRA for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, in a manner consistent with the United States' obligations under international agreements unless an exception under section 1605(b) applies. Vendor understands that this requirement may only be waived by the applicable federal agency in limited situations, as set out in ARRA, Section 1605.

(l) **SECTION 1606, WAGE REQUIREMENTS**

Vendor agrees that, in accordance with ARRA Section 1606, both it and its subcontractors shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with ARRA funds shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in the State of Illinois is located at: <http://www.gpo.gov/davisbacon/il.html>.

(m) **DBE REQUIREMENTS**

The Vendor shall comply with all applicable federal Disadvantaged Business Enterprise (DBE) requirements related to DBE programs. In the event there are no federal DBE programs applicable to this agreement, to the extent applicable under State law, the Vendor shall comply with the State of Illinois' Business Enterprise Program ("BEP") http://www.sell2.illinois.gov/bep/Business_Enterprise.htm. In the event this agreement is a grant agreement not covered by federal DBE requirements, the Contractor shall use reasonable and good faith efforts to solicit and utilize BEP-certified Minority Business Enterprises (MBEs), Female Business Enterprises (FBEs) and businesses owned and controlled by persons with disabilities (PBEs) for those contracting, subcontracting, and purchase opportunities that exist and report utilization to the BEP.

(n) **RECORDS RETENTION**

The Contractor shall retain all such contract records intact in a form, if not original documents, as may be approved by the federal government, for at least three (3) years following termination of a project funded by ARRA or for such longer period of time as required by the State.

(o) **SUBCONTRACTOR REQUIREMENTS**

Vendor agrees that it shall include these standard ARRA terms and conditions, including this requirement, in any of its subcontracts that are funded in whole or in part with ARRA funds.

**OFFICE OF HEALTH INFORMATION TECHNOLOGY
HIE White Space Grant Program**

Attachment B: Budget Narrative

A budget narrative is a required part of the HIE White Space Grant Program Request for Grant Application. Please provide a detailed description of all sources of project income/revenue and anticipated project expenditures for the one year period encompassing the grant timeframe (December 15, 2012 – December 15, 2013). In addition, please indicate plans for sustainability beyond the proposed project timeframe. Use additional pages as needed.

Name of Grant Applicant:

Name of Fiscal Agent, if different from above:

Applicant or Fiscal Agent FEIN#:

Budget Narrative:

**ATTACHMENT D
STATE OF ILLINOIS
GRANT AGREEMENT
BETWEEN
THE ILLINOIS OFFICE OF HEALTH INFORMATION TECHNOLOGY
AND
XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

OHIT GRANT # 2013-XXX

Subject to the provisions of the Illinois Grant Fund Recovery Act, 30 ILCS 705/1 *et seq.*, and the Illinois Public Aid Code, 305 ILCS 5/12-4.7 and 5/12-10.2, the State of Illinois, acting by and through the Office of Health Information Technology (hereinafter referred to as "OHIT"), with the Department of Healthcare and Family Services (hereinafter referred to as "HFS") as the repository of funds for OHIT under an existing Interagency Agreement, and XXXXXXXXXXXXXXXX (hereinafter referred to as "Grantee"), hereby enter into this Grant Agreement (hereinafter referred to as "Agreement"), effective upon complete execution of this Agreement, pursuant to the following terms and provisions:

1. Term and Scope of Agreement.

- 1.1. Term. This Agreement shall be effective upon execution of the Agreement through December 31, 2012, unless otherwise terminated as set forth herein.
- 1.2. Renewal. This Agreement may not be renewed.
- 1.3. Entirety of Agreement. This Agreement, in its present form, contains all the terms and conditions agreed upon by the parties and there exist no other agreements or understandings, oral or otherwise, that bind any of the parties regarding the subject matter of this Agreement.

2. Termination of Agreement.

- 2.1. Availability of Funds. This Agreement is subject to the availability of funds secured through a National Council for Community Behavioral Healthcare (hereinafter referred to as "National Council") grant award to OHIT. The award is funded jointly by the U.S. Department of Health and Human Services (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA) and the HHS Health Resources Services Administration (HRSA) by grant number 1UR1SMO60319-01, -02 and supplemental grant number 3UR1SMO60319-02S1. The Center for Integrated Health Solutions (CIHS) provides federal program administration under an HHS cooperative agreement with the National Council. OHIT's obligations hereunder shall be subject to immediate termination and cancellation if said grant funding is not available, and OHIT's obligations hereunder shall also be subject to immediate termination and cancellation at any time when there are not sufficient authorized funds lawfully available to OHIT to meet such obligations.
- 2.2. Termination Without Cause. This Agreement may be terminated by OHIT or Grantee without cause upon sixty (60) days' written notice to the other party.
- 2.3. Notice of Breach and Termination for Cause. In the event of Grantee's failure to comply with a term of this Agreement, OHIT will provide notice to Grantee of the breach. Upon thirty (30) days after such notice, or such time as reasonably determined by OHIT and specified in the notice, if such breach is not cured to OHIT's satisfaction, OHIT may proceed to termination by serving a notice of termination upon Grantee, which shall immediately terminate this Agreement. OHIT may proceed to recover the grant funds from Grantee in the manner specified in the Illinois Grant Funds Recovery Act, 30 ILCS 705/1 *et seq.*
- 2.4. Notice of Change in Circumstances. In the event that Grantee becomes a party to any litigation, investigation or transaction that may reasonably be considered to have a material impact on Grantee's ability to perform under this Agreement, Grantee will immediately notify OHIT in writing.

- 2.5. Nonwaiver. Failure of either party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.
- 2.6. Automatic Termination. This Agreement shall automatically terminate on a date set by OHIT for any of the following reasons:
- 2.6.1 If funds become unavailable as set forth in Section 2.1 of this Agreement;
 - 2.6.2 If Grantee breaches any of the representations, warranties or covenants set forth in this Agreement, which breach inhibits OHIT's ability to collect Federal Financial Participation;
 - 2.6.3 If legislation or regulations are enacted or a court of competent jurisdiction interprets a law so as to prohibit the continuance of this Agreement; or
 - 2.6.4 Upon Grantee's refusal to amend this Agreement pursuant to Section 6.3 of this Agreement.

3. Grant Agreement Management and Notices.

- 3.1. Grant Agreement Management. OHIT shall designate a Grant Agreement Manager who will facilitate communication between Grantee and various administrative units within the State of Illinois. All communications from Grantee to OHIT pertaining to this Agreement are to be directed to the Grant Agreement Manager at the address and telephone number set forth below.
- 3.2. Notices. All telephonic and electronic communications between the parties shall be made to the telephone number(s) and email address(es) set forth below. All written notices, requests and communications, unless specifically required to be given by a specific method, may be sent to the address or telefacsimile number set forth below, by one of the following methods: (1) delivered in person, obtaining a signature indicating successful delivery; (2) sent by a recognized overnight delivery service, obtaining a signature indicating successful delivery; (3) sent by certified mail, obtaining a signature indicating successful delivery; or (4) transmitted by telefacsimile, producing a document indicating the date and time of successful transmission. Either party may at any time give notice in writing to the other party of a change of address or telephone or telefacsimile number.

To Grantee:

Programmatic Contact:

Administrative Contact:

To OHIT:

Programmatic Contact: Office of Health Information Technology
Office of the Governor
James R. Thompson Center
100 West Randolph St., Suite 2-201
Chicago, Illinois 60601
Phone: 312.814.1600
Fax: 312.814.1468

Administrative Contact: Office of Health Information Technology
Office of the Governor
James R. Thompson Center
100 West Randolph St., Suite 2-201
Chicago, Illinois 60601
Phone: 312.814.1600

4. **Parties' Obligations.**

4.1 Background. OHIT applied for and received grant funding from the National Council to establish the Behavioral Health Integration Project (BHIP) in Illinois. BHIP will work to address barriers and ensure that behavioral health is appropriately integrated into the Illinois HIE (ILHIE). This project will promote the use of ILHIE Direct as a secure messaging solution to exchange data between behavioral and physical health providers. BHIP also seeks to develop a toolkit of technical, legal and administrative resources available to all providers in the state. This work will conclude at the end of 2012 with the funding demonstration projects utilizing ILHIE Direct and the developed toolkit. It will create an important condition for sustainability of HIE in Illinois by creating a path for the critical integration of behavioral health data into care coordination efforts.

4.2 Grantee shall:

4.2.1 ...

4.2.2 ...

4.2.3 Quarterly Reports. No later than the 15th day of the month following the end of each calendar quarter, Grantee shall file a report describing the progress of the project, and the expenditure of the grant funds related thereto.

4.3 OHIT shall:

4.3.1 ...

4.3.2 ...

4.3.3 Review and provide feedback on the Grantee's efforts on a monthly basis;

4.3.4 Provide final approval of any materials or publications produced utilizing grant funds.

5. **Payment.**

5.1 Payment.

5.1.1 The maximum amount payable by OHIT to the Grantee under this Agreement shall be **\$XXXXX.XX**.

5.1.2 Grantee services in support of the BHIP Project will be paid via monthly invoices for deliverables and services rendered, not to exceed the Agreement's maximum amount payable.

5.1.3 In the event of termination of this Agreement for any reason by OHIT, OHIT shall pay only those amounts, if any, due and owing to the Grantee for services actually rendered up to and including the date of termination of the Agreement and for which OHIT is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of the Grantee's claim. This provision in no way limits the remedies available to OHIT under this Agreement in the event of termination.

5.2. Recovery of Grant Funds. Any grant funds remaining at the end of the Agreement period which are not expended or legally obligated by Grantee shall be returned to OHIT within forty-five (45) days after the expiration of this Agreement. In the event OHIT determines that any grant funds have not been used in accordance with the terms and conditions of this Agreement, or are being improperly withheld by Grantee or any and all subgrantees for which Grantee is responsible, OHIT may proceed to recover the grant funds from Grantee in the manner specified in the Illinois Grant Funds Recovery Act, 30 ILCS 705/1 *et seq.*

5.3. Computational Error. OHIT reserves the right to correct any mathematical or computational error in payment subtotals or total contractual obligation. OHIT will provide Grantee with thirty (30) days' notice of any such corrections.

5.4 Travel and Other Expenses. Not applicable.

6. **General Terms.**

- 6.1. Agreement to Obey All Laws. Grantee shall at all times observe and comply with all laws, ordinances, codes and regulations of Federal, State, county and local governmental agencies which in any manner affect the terms of this Agreement.
- 6.2. Amendments. This Agreement may be amended or modified by the consent of both parties at any time during its term. Amendments to this Agreement must be in writing and signed by OHIT and the Grantee. No change in, addition to, or waiver of any term or condition of this Agreement shall be binding on OHIT unless approved in writing by an authorized representative of OHIT.
- 6.3. Amendments Necessary for Statutory or Regulatory Compliance. Grantee shall, upon request by OHIT, and upon receipt of a proposed amendment to this Agreement, amend this Agreement, if and when required in the opinion of OHIT, to comply with Federal or State laws or regulations. If Grantee refuses to sign such amendment within thirty (30) business days after receipt, this Agreement shall be subject to automatic termination pursuant to Section 2.6.d., and Grantee shall immediately refund to OHIT the unspent grant funds as of termination date.
- 6.4. Assignment. Neither party shall assign any right, benefit or duty under this Agreement without the other party's prior written consent.
- 6.5. Audits, Records and Accounting.
- 6.5.1 *Right of Audit.* This Agreement, and all books, records, and supporting documents related thereto, shall be available for review or audit by State and Federal officials, including OHIT and its representatives and Federal Auditors, and the Auditor General pursuant to 705 ILCS 105/27.7, and Grantee agrees to cooperate fully with any such review or audit. Upon reasonable notice by OHIT, Grantee shall provide, in Illinois during normal business hours, full and complete access to the relevant portions of Grantee's books and billing records as they relate to payments under this Agreement. If the audit findings indicate overpayment(s) to Grantee, OHIT shall adjust future or final payments otherwise due to Grantee. If no payments are due and owing to Grantee, or if the overpayment(s) exceed the amount otherwise due to Grantee, Grantee shall immediately refund all amounts that may be due to OHIT.
- 6.5.2 *Retention of Records.* Grantee shall maintain all business, professional, and other records in accordance with this paragraph and pursuant to generally accepted accounting practice. Grantee shall maintain, during the pendency of the Agreement and for a minimum of five (5) years after the completion of the Agreement, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the Agreement. If an audit, litigation, or other action involving the records is begun before the end of the five-year period, the records must be retained until all issues arising out of the action are resolved. Failure to maintain the books, records, and supporting documents required by this Section 6 shall establish a presumption in favor of OHIT for the recovery of any funds paid by OHIT under the Agreement for which adequate books, records, and other documents are not available to support the purported disbursement.
- 6.5.3 *Accounting.* Grantee shall maintain complete and accurate accounting records of all grant funds administered under this Agreement, pursuant to section 11 of the Grant Fund Recovery Act, 30 ILCS 705/11. Upon expiration or termination of this Agreement, Grantee shall prepare and submit to OHIT a Close-out and Cost Reconciliation Report to determine the relationship between total revenues and actual costs under this Agreement. OHIT reserves the right to independently verify this report for accuracy.
- 6.6 Child Support. Grantee shall ensure that its employees who provide services to OHIT under this Agreement are in compliance with child support payments pursuant to a court or administrative order of this or any other State. Grantee will not be considered out of compliance with the requirements of this Section if, upon request by OHIT, Grantee provides:

- 6.6.1 Proof of payment of past due amounts in full;
- 6.6.2 Proof that the alleged obligation of past due amounts is being contested through appropriate court or administrative proceedings and Grantee provides proof of the pendency of such proceedings; or
- 6.6.3 Proof of entry into payment arrangements acceptable to the appropriate State agency.
- 6.7. Choice of Law. This Agreement shall be governed by and construed according to the laws and administrative rules of the State of Illinois. Any claim against the State arising out of this Agreement must be filed exclusively with the Illinois Court of Claims, or, if jurisdiction is not accepted by that court, with the appropriate State or Federal court located in Sangamon County, Illinois.
- 6.8. Confidentiality.
- 6.8.1 *Confidentiality of Identified Information.* Each party shall protect the confidentiality of information provided by the other party, or to which the receiving party obtains access by virtue of its performance under this Agreement, that either has been identified as confidential by the disclosing party or by its nature warrants confidential treatment. The receiving party shall use such information only for the purpose of this Agreement and shall not disclose it to anyone except those of its employees who need to know the information. These nondisclosure obligations shall not apply to information that is or becomes public through no breach of this Agreement, that is received from a third party free to disclose it, that is independently developed by the receiving party, or that is required by law to be disclosed. Confidential information shall be returned to the disclosing party upon request.
- 6.8.2 *Confidentiality of Program Recipient Identification.* Grantee shall ensure that all information, records, data, and data elements pertaining to applicants and recipients of public assistance, or to providers, facilities, and associations, shall be protected by Grantee and its employees, by Grantee's corporate affiliates and their employees, and by Grantee's subcontractors or subgrantees and their employees, from unauthorized disclosure, pursuant to 305 ILCS 5/11-9, 11-10, and 11-12; 42 USC 654(26); 42 CFR Part 431, Subpart F; 45 CFR Part 160 and 45 CFR Part 164, Subparts A and E; and Illinois Rules of Court.
- 6.9. Dispute Resolution. In the event that OHIT and Grantee have a dispute as to the meaning of a requirement solely included as a result of a federal regulation applicable to or referred to in this Agreement, OHIT will prepare a request for, and will seek, an interpretation from the appropriate federal agency or agencies, and that interpretation will be adopted by OHIT and Grantee.
- 6.10. Gifts. Grantee and Grantee's employees and subcontractors are prohibited from giving gifts to OHIT employees, and from giving gifts to, or accepting gifts from, any person who has a contemporaneous contract with OHIT involving duties or obligations related to this Contract.
- 6.11. Indemnification. Grantee agrees to assume all risk of loss and to indemnify and hold OHIT and its officers, agents, and employees harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, for injuries (including death) to persons, and for loss of, damage to, or destruction of property (including property of the State of Illinois) arising out of or in connection with Grantee's negligence or wrongful conduct under this Agreement. In the event that any demand or claim is made or any suit is commenced against OHIT, OHIT shall give prompt written notice thereof to Grantee, and Grantee shall have the right to compromise or defend the same to the extent of its own interest.
- 6.12. Employment Status. Grantee and Grantee's employees are not employees of the State of Illinois for any purpose under this Agreement, and are not entitled to any benefits provided to employees of the State under the Personnel Code and regulations or other laws of the State of Illinois. Grantee shall be responsible for the reporting of, and compliance with State and Federal income taxes and Social Security taxes, to the extent applicable.

- 6.13. Media Relations. Subject to any disclosure obligations of Grantee under applicable law, rule, or regulation, news releases pertaining to this Agreement or the services or project to which it relates shall only be made with prior approval by, and in coordination with, OHIT. The parties will cooperate in connection with media inquiries, campaigns or initiatives involving the Agreement. This section does not apply to presentations or materials that are directly or indirectly related to the deliverables of the project. Notwithstanding the foregoing, however, Grantee may announce the grant and include its description and a record of the sponsor's support in its routine and customary reporting and respond to public inquiries with information about grant activities.
- 6.14. Nondiscrimination. Grantee shall abide by all federal and State laws, regulations or orders that prohibit discrimination because of race, creed, color, religion, sex, national origin, ancestry, age, or physical or mental disability. Grantee further agrees to take affirmative action to ensure that no unlawful discrimination is committed in any manner, including, but not limited to, in the delivery of services under this Agreement.
- 6.15 Ownership of Work Product.
- 6.15.1 Any and all work products, including, but not limited to, reports, written documents, computer programs, electronic data bases, electronic data processing, documentation and source materials purchased or newly developed under this Agreement shall be the property of OHIT.
- 6.15.2 The Grantee shall not publish, disseminate, or otherwise release any information acquired or produced pursuant to this Grant without adhering to the procedures outlined in this paragraph. A copy of the proposed complete documents, manuscript or other media for publication or distribution shall be submitted to OHIT a minimum of 15 days before the desired date of publication or distribution. This 15-day period shall be called the review period. At any time during the review period, OHIT may make written comments on the proposed release. The Grantee shall have the alternative of deleting such subject matter or otherwise modifying the manuscript or presentation material in response to the comments made by OHIT and proceeding with publication or public presentation without delay. In the event, OHIT does not provide comments within the 15-day period the Grantee shall proceed with publication.
- 6.15.3 OHIT consents to the retention by Grantee and its subcontractors, copies of the work product for their own use, provided that all laws, rules and regulations pertaining to the maintenance of confidentiality are observed.
- 6.15.4 Notwithstanding any other provision, Grantee shall be entitled to a perpetual, nonexclusive, royalty free license to use instructional materials as provided and produced under this Agreement in furtherance of Grantee's educational and research mission, subject to the purposes of the HITECH Act.
- 6.16. Rules of Construction. Unless otherwise specified, or the context otherwise requires:
- 6.16.1 Provisions apply to ongoing obligations of the parties;
- 6.16.2 "Or" is not exclusive;
- 6.16.3 References to statutes and rules include subsequent amendments and successors thereto;
- 6.16.4 The various headings of this Agreement are provided for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof;
- 6.16.5 If any payment or delivery hereunder shall be due on any day that is not a business day, such payment or delivery shall be made on the next succeeding business day;

- 6.16.6 "Days" shall mean calendar days, and "Business day" shall mean a weekday (Monday through Friday), between the hours of 8:30 a.m. Central Time and 5:00 p.m. Central Time;
- 6.16.7 Use of the male gender (e.g., "he", "him", "his") shall be construed to include the female gender (e.g., "she", "her", "hers").
- 6.16.8 Words in the plural which should be singular by context shall be so read, and vice versa; and
- 6.16.9 References to "Department" or "OHIT" shall include any successor agency or agencies thereto.
- 6.17. Severability. In the event that any provision, term or condition of this Agreement is declared by a court of competent jurisdiction to be void, unenforceable, or against public policy, then said provision, term or condition shall be construed as though it did not exist and shall not affect the remaining provisions, terms, or conditions of this Agreement.
- 6.18. Sexual Harassment. Grantee shall have written sexual harassment policies that comply with the requirements of 775 ILCS 5/2-105.
- 6.19. Similar Services. Nothing in this Agreement shall prevent Grantee from performing similar services for other parties. However, Grantee warrants that at no time will the compensation paid by OHIT for services rendered under this Agreement exceed the rate Grantee charges for the rendering of similar services elsewhere.
- 6.20. Solicitation of Employees. During the term of this Agreement, and for a period of one (1) year after its termination, Grantee and OHIT agree that they will not solicit for employment or employ, either as an employee or an independent contractor, any person who is or has been employed by the other in a managerial or policy-making role regarding this Agreement within the previous twelve (12) months, except with written notice to the other. Grantee shall immediately notify OHIT's Ethics Officer in writing if Grantee solicits or intends to solicit for employment any of OHIT's employees during the term of this Agreement. OHIT will be responsible for keeping Grantee informed as to the name and address of the Ethics Officer. Should an employee of Grantee take and pass all required employment examinations and meet all relevant employment qualifications without the prior knowledge of the management of OHIT, OHIT may employ that individual and no breach of this Agreement shall have occurred.
- 6.21.1 Subgrant Agreement. Any Subgrant Agreement entered into must be prior approved by OHIT. Any subgrant agreement shall be in writing and shall include a budget, and shall provide that the subgrantee will be subject to all terms of this Agreement. Grantee shall remain responsible for the performance of all subgrants and shall make all payments due and owing to the subgrantees. Grantee shall provide to OHIT a copy of the subgrant agreement upon execution.
- 6.22. Survival of Obligations. Those obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.
7. **CERTIFICATIONS AND CONFLICTS** Grantee certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest, and further specifically certifies that:
- 7.1. Grantee, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.
- 7.2. Grantee is not in default on an educational loan (5 ILCS 385/3).
- 7.3. Grantee (if an individual, sole proprietor, or partner) has informed the director of the Agency in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges

that contracts made without the appropriate filing with the Auditor General are not payable from the “contractual services” or other appropriation line items. Grantee has not received an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the “contractual services” or other appropriation line items (30 ILCS 105/15a).

- 7.4. In accordance with the Steel Products Procurement Act, steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (30 ILCS 565).
- 7.5. Grantee will, pursuant to the Drug Free Workplace Act, provide a drug free workplace and Grantee and its employees shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the Contract. This certification applies to contracts of \$5000 or more with individuals; and to entities with 25 or more employees (30 ILCS 580). Attachment A must be completed by Grantee.
- 7.6. Neither Grantee nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (30 ILCS 582).
- 7.7. Grantee has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States (720 ILCS 5/33 E-3, E-4).
- 7.8. Grantee complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- 7.9. Grantee does not pay dues to, or reimburse or subsidize payments by its employees for any dues or fees to any “discriminatory club” (775 ILCS 25/2).
- 7.10. Grantee complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).
- 7.11. Grantee certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been produced in whole or in part by the labor or any child under the age of 12 (30 ILCS 584).
- 7.12. Grantee certifies that it is not in violation of the Lead Poisoning Prevention Act (410 ILCS 45).
- 7.13. Grantee warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Grantees and subcontractors from hiring the then-serving Governor’s family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
- 7.14. In accordance with Public Act 095-0307, all information technology, including electronic information, software, systems and equipment, developed or provided under this contract must comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at www.dhs.state.il.us/iitaa.
- 7.15. Grantee has disclosed, and agrees it is under a continuing obligation to disclose to the State, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest, or which would prohibit Grantee from having or continuing the Contract, or which may conflict in any manner with Grantee’s

obligation under this Contract. Grantee shall not employ any person with a conflict to perform under this Contract. If any elected or appointed State officer or employee, or the spouse or minor child of same has any ownership or financial interest in Grantee or the Contract.

7.16. Exclusions.

7.16.1. The Grantee shall screen all current and prospective employees, contractors and sub-contractors, prior to engaging their services under this Contract and at least annually thereafter, by:

7.16.1.1. requiring that all current or prospective employees, contractors or sub-contractors disclose whether they are an Excluded Individual or Entity; and

7.16.1.2. reviewing the list of sanctioned persons maintained by the Office of Inspector General (OIG) (<http://www.state.il.us/agency/oig>), and the List of Excluded Individuals/Entities maintained by the United States Department of Health and Human Services Office of Inspector General (HHS/OIG) (<http://www.dhhs.gov/oig>).

7.16.2 For purposes of this section, "Excluded Individual or Entity" shall mean a person or entity which:

7.16.2.1 under Section 1128 of the Social Security Act, is or has been terminated, barred, suspended or otherwise excluded from participation in, or as the result of a settlement agreement has voluntarily withdrawn from participation in, any program under Federal law, including any program under Titles XVIII, XIX, XX or XXI of the Social Security Act;

7.16.2.2 has not been reinstated in the program after a period of exclusion, suspension, debarment, or ineligibility; or

7.16.2.3 has been convicted of a criminal offense related to the provision of health care items or services in the last ten (10) years.

7.16.3 The Grantee shall terminate its relations with any employee, contractor or sub-contractor immediately upon learning that such employee, contractor or sub-contractor meets the definition of an Excluded Individual or Entity, and shall notify the OIG of the termination.

7.17 Lobbying.

7.17.1 The Grantee certifies to the best of Grantee's knowledge and belief, that no Federally appropriated funds have been paid or will be paid by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan or grant, or the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

7.17.2 If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Grantee shall complete and submit Standard Form LLL, "Disclosure Forms to Report Lobbying," in accordance with its instructions. Such Form is to be obtained at the Grantee's request from OHIT.

- 7.17.3 The Grantee shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 7.17.4 This certification is a material representation of fact upon which reliance was placed when this Contract was executed. Submission of this certification is a prerequisite for making or entering into the transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 7.18 Clean Air Act and Clean Water Act. The Grantee shall be in compliance with all applicable standards, orders or regulations issued pursuant to the Federal Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.). Violations shall be reported to the United States Department of Health and Human Services and the appropriate Regional Office of the United States Environmental Protection Agency.
- 7.19 Grantee certifies under oath that: all information in the Grant Agreement is true and correct to the best of the Grantee's knowledge, information, and belief; that the funds shall be used only for the purposes described in the grant agreement; and that the award of grant funds is conditioned upon such certification.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed by their duly authorized representatives.

**Illinois Office of Health
Information Technology**

Grantee

By: _____
Laura Zaremba, Director

By: _____

Date: _____

Date: _____

Attachment A
HIPAA Compliance Obligations

A. Definitions.

1. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR section 164.501.
2. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR section 164.502(g).
3. "PHI" means Protected Health Information, which shall have the same meaning as the term "protected health information" in 45 CFR section 160.103, limited to the information created or received by Vendor from or on behalf of the Agency/Buyer.
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 section 164.103.

B. Vendor's Permitted Uses and Disclosures.

1. Except as otherwise limited by this Contract, Vendor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Agency/Buyer as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by the Agency/Buyer.
2. Except as otherwise limited by this Contract, Vendor may use PHI for the proper management and administration of Vendor or to carry out the legal responsibilities of Vendor.
3. Except as otherwise limited by this Contract, Vendor may disclose PHI for the proper management and administration of Vendor, provided that the disclosures are required by law, or Vendor 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. Vendor shall require the person to whom the PHI was disclosed to notify Vendor 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 Contract, Vendor may use PHI to provide data aggregation services to the Agency/Buyer as permitted by 45 CFR section 164.504(e)(2)(i)(B).
5. Vendor may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR section 164.502(j)(1).

C. Limitations on Vendor's Uses and Disclosures. Vendor shall:

1. Not use or further disclose PHI other than as permitted or required by the Contract or as required by law;
2. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Contract;
3. Mitigate, to the extent practicable, any harmful effect that is known to Vendor of a use or disclosure of PHI by Vendor in violation of the requirements of this Contract;
4. Report to the Agency/Buyer any use or disclosure of PHI not provided for by this Contract of which Vendor becomes aware;
5. Ensure that any agents, including a subVendor, to whom Vendor provides PHI received from the Agency/Buyer or created or received by Vendor on behalf of the Agency/Buyer, agree to the same restrictions and conditions that apply through this Contract to Vendor with respect to such information;
6. Provide access to PHI in a Designated Record Set to the Agency/Buyer or to another individual whom the Agency/Buyer names, in order to meet the requirements of 45 CFR section 164.524, at the Agency/Buyer's request, and in the time and manner specified by the Agency/Buyer;
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 Agency/Buyer directs or that Vendor agrees to pursuant to 45 CFR section 164.526 at the request of the Agency/Buyer or an individual, and in a time and manner specified by the Agency/Buyer;
8. Make Vendor's internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the Agency/Buyer or created or received by Vendor on behalf of the Agency/Buyer available to the Agency/Buyer and to the Secretary of

Health and Human Services for purposes of determining the Agency/Buyer's compliance with the Privacy Rule;

9. Document disclosures of PHI and information related to disclosures of PHI as would be required for the Agency/Buyer to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR section 164.528;
10. Provide to the Agency/Buyer or to an individual, in a time and manner specified by the Agency/Buyer, information collected in accordance with the terms of this Contract to permit the Agency/Buyer to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR section 164.528;
11. Return or destroy all PHI received from the Agency/Buyer or created or received by Vendor on behalf of the Agency/Buyer that Vendor still maintains in any form, and to retain no copies of such PHI, upon termination of this Contract for any reason. If such return or destruction is not feasible, Vendor shall provide the Agency/Buyer with notice of such purposes that make return or destruction infeasible, and upon the parties' written agreement that return or destruction is infeasible, Vendor shall extend the protections of the Contract 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 Vendor and to PHI that is in the possession of subVendors or agents of Vendor.

D. Agency/Buyer Obligations. The Agency/Buyer shall:

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

E. Breach Requirements.

1. Sections 164.308, 164.310, 164.312 and 164.316 of title 45, Code of Federal Regulations, apply to the Vendor in the same manner that such sections apply to the Agency. The Vendor'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 Vendor creates, receives, maintains, or transmits on behalf of the covered entity as required by HIPAA;
 - b. Ensuring that any agent, including a subVendor, to whom the Vendor provides such information agrees to implement reasonable and appropriate safeguards to protect the data; and
 - c. Reporting to the Agency any security incident of which it becomes aware.
2. Privacy Obligations. To comply with the privacy obligations imposed by HIPAA, Vendor 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 the Underlying Agreement;
 - c. Report to the Agency any use or disclosure of the information not provided for by the Underlying Agreement of which the Vendors becomes aware;
 - d. Ensure that any agents, including a subVendor, to whom the Vendor provides Protected Health Information received from the Agency or created or received by the Vendor on behalf of the Agency agrees to the same restrictions and conditions that apply to the Vendor with respect to such information;
 - e. Make available to the Agency 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 Agency 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 Agency 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, mitigate any harmful effects that are known to the Vendor 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 Vendor 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 by limiting disclosures as required by HIPAA;
 - l. Vendor shall assure that appropriate systems are in place to record what is disclosed, when and to whom. For electronic health records acquired as of January 1, 2009, the Vendor must keep an accounting of disclosures made on or after January 1, 2014. (2) In the case of electronic health records acquired after January 1, 2009, the Vendor must keep an accounting of disclosures made on or after (a) January 2, 2011; or (b) the date that it acquires the electronic health record. HHS may postpone the effective dates to be no more than 2016 for (1) above and no later than 2013 for (2) above.
3. Breach Notification. In the event that the Vendor discovers a Breach of Unsecured Protected Health Information, the Vendor agrees to take the following measures within 10 calendar days after the Vendor first becomes aware of the incident:
- a. To notify the Agency 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 Vendor shall be provided without unreasonable delay, 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, Vendor must notify the Agency of any such incident within the above timeframe even if Vendor has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA. The Vendor 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 Vendor, including any person other than the individual committing the Breach, that is an employee, officer or other agent of the Vendor or an associate of the Vendor;
 - 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 complete and submit the Breach Notice form to the Agency (see Exhibit A); and
 - d. To include for the Agency a sample copy of the notice that was used to inform individuals about the breach.
4. Notification Duty. It is Vendors duty to provide the Breach notification to the affected individuals unless Agency agrees to provide the Breach notification.
5. Costs. Vendor assumes all costs for providing Breach notification unless Agency agrees to assume any costs.
6. Indemnification for Breach Notification. Vendor shall indemnify the Agency for costs associated with 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.

7. Security Rule Compliance. Vendor shall comply with the Security Rule's administrative, physical and technical safeguard requirements. As part of compliance with the Security Rule, Vendor shall develop and implement written security policies and procedures with respect to the electronic PHI they handle. Vendor assures and acknowledges Vendor will comply or is in 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.) Vendor 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 Contract shall be resolved in favor of a meaning that permits the Agency/Buyer to comply with the Privacy Rule.

SAMPLE

**EXHIBIT A
 NOTIFICATION TO THE AGENCY OF BREACH OF
 UNSECURED PROTECTED HEALTH INFORMATION**

The Vendor must complete this form to notify HFS pursuant to the Vendor Agreement of any Breach of Unsecured Protected Health Information. In accordance with Vendor Agreement, notice must occur immediately or within 10 calendar days of the breach being discovered.

Notice shall be provided to the following Contacts at HFS:

- (1) Contract Administrator (insert name) _____, in compliance with the Notice Requirements of the Underlying Agreement.

HFS Privacy Officer at:
 Illinois Department of Healthcare and Family Services
 Attn: Privacy Officer
 201 South Grand Avenue East
 Springfield, Illinois 62763

Information to be Submitted by Vendor:

Contract Information:
Contract Number:
Contract Title:
Contact Person for this Incident:
Contact Person's Title:
Contact's Address:
Contact's E-mail:
Contact's Telephone No.:

NOTIFICATION:

Vendor hereby notifies the Agency that there has been a Breach of Unsecured (unencrypted) Protected Health Information that Vendor has used or has had access to under the terms of the Vendor Agreement, as described in detail below:

Date of Breach Date of Discovery of Breach:
Detailed Description of the Breach:
Types of Unsecured Protected Health Information involved in the Breach (such as full name, SSN, Date of Birth, Address, Account Number, Disability Code, etc – List All).
What steps are being taken to investigate the breach, mitigate losses, and protect against any further breaches?

Number of Individuals Impacted If over 500, identify whether individuals live in multiple states?

Submitted by:

Signature: _____ **Date:** _____

Printed Name and Title: _____

SAMPLE

ATTACHMENT A
STATE OF ILLINOIS DRUG-FREE WORKPLACE CERTIFICATION

Contractor certifies that he/she/it will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the Agreement.

CHECK THE BOX THAT APPLIES:

- This business or corporation does not have twenty-five (25) or more employees.
- This business or corporation has twenty-five (25) or more employees, and Contractor certifies and agrees that it will provide a drug free workplace by:

- A) Publishing a statement:
 - 1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in Grantee's workplace.
 - 2) Specifying the actions that will be taken against employees for violations of such prohibition.
 - 3) Notifying the employees that, as a condition of employment on such contract, the employee will:
 - a) abide by the terms of the statement; and
 - b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- B) Establishing a drug free awareness program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) Contractor's policy of maintaining a drug free workplace;
 - 3) any available drug counseling, rehabilitation, and employee assistance programs; and
 - 4) the penalties that may be imposed upon an employee for drug violations.
- C) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- D) Notifying the contracting or granting agency within ten (10) days after receiving notice under part (B) or paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.
- E) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5 of the Drug Free Workplace Act, 1992 Illinois Compiled Statute, 30 ILCS 580/5.
- F) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
- G) Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act, 1992 Illinois Compiled Statute, 30 ILCS 580/1 *et seq.*

THE UNDERSIGNED AFFIRMS, UNDER PENALTIES OF PERJURY, THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS CERTIFICATION ON BEHALF OF GRANTEE.

Signature of Authorized Representative

OHIT Grant #2013-XXX
Grant ID Number

Printed Name and Title

Date

ATTACHMENT B

Taxpayer Identification Certification

- A. Grantee certifies that:
1. The number shown on this form is Grantee's correct taxpayer identification number; **and**
 2. Grantee is not subject to backup withholding because:
 - (a) Grantee is exempt from backup withholding, or
 - (b) Grantee has not been notified by the Internal Revenue Service (IRS) that Grantee is subject to backup withholding as a result of a failure to report all interest or dividends, or
 - (c) The IRS has notified Grantee that Grantee is no longer subject to backup withholding, **and**
 3. Grantee is a U.S. person (including a U.S. resident alien).

B. Grantee's Name: XXXXXXXXXX

C. Grantee's Employer Identification Number (EIN): XXXXXXXXXX

D. Grantee's Legal Status (*check one*):

- | | |
|---|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Governmental |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Nonresident alien |
| <input type="checkbox"/> Partnership/Legal Corporation | <input type="checkbox"/> Estate or trust |
| <input type="checkbox"/> Tax-exempt | <input type="checkbox"/> Pharmacy (Non-Corp.) |
| <input type="checkbox"/> Corporation providing or billing medical or health care services | <input type="checkbox"/> Pharmacy/Funeral |
| <input type="checkbox"/> Corporation NOT providing or billing medical or health care services | <input type="checkbox"/> Home/Cemetery (Corp) |
| | <input type="checkbox"/> Other: Not-for-Profit Corp. |

THE UNDERSIGNED AFFIRMS, UNDER PENALTIES OF PERJURY, THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS CERTIFICATION ON BEHALF OF GRANTEE.

Signature of Authorized Representative

Printed Name and Title

Date

Attachment E: Illinois Health Information Exchange Test Pilot Agreement

This Illinois Health Information Exchange Test Pilot Agreement (“Agreement”) is made effective this ____ day of _____, 2012 (the “effective Date”) by and between the State of Illinois Office of Health Information Technology (“OHIT”), an instrumentality of the State of Illinois, and _____ (“Participant”). OHIT and the Participant may be referred to herein as a “party” or “parties”.

PREAMBLE:

WHEREAS, OHIT is developing an electronic patient data exchange systems, the Illinois Health Information Exchange (“ILHIE”), to allow Authorized Users to electronically exchange patient information; and

WHEREAS, OHIT and the Participant wish to enter into a trial test of certain proposed ILHIE services (“Services”) involving the exchange of patient information;

WHEREAS, OHIT has entered into agreements with health care entities under which each entity has agreed to provide the Participant with access to patient information in the custody of participating entities; and

WHEREAS, Participants desire to obtain information located on each other’s Systems to allow Authorized Users to access patient information for the continuing care and treatment of patients and beneficiaries, payment of claims and healthcare operations; and

WHEREAS, Participant and OHIT desire to maintain the privacy and security of Protected Information exchanged through the ILHIE;

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 here hereby acknowledged, and wishing to be legally bound hereby, the Participant hereto agrees as follows:

1. **Purpose and Scope.** This Agreement governs how Protected Information may be used and disclosed by the Participant using the ILHIE. It is the intent of the Participant and OHIT to protect the confidentiality and security of all Protected Information exchanged through the ILHIE subject to this Agreement, in accordance with applicable State and federal law, including without limitation, the federal Health Insurance Portability and Accountability Act of 1996 and its implementing regulations on privacy and security found at 45 C.F.R. Parts 160 and 164, as the same may be amended from time to time (“HIPAA”). This Agreement shall not be considered to limit or apply to the exchange of information that does not involve the electronic transmission of Protected Information from one System to another, such as information provided through paper or other hard copies.
2. **Definitions.** When presented as capitalized terms in this Agreement, the following terms have the meanings indicated below:
 - a. “*Agreement*” shall mean this Illinois Health Information Exchange Test Pilot Agreement.
 - b. “*Authorized User*” shall mean a Participant’s employees, agents, assigns representatives, independent contractors, or other persons or entities authorized by such Participant, under the procedures set forth in sections 5(a) and 3(b), to access, use or disclose Protected Information from another Participant’s System.

- c. “*Confidentiality Agreement*” shall mean an agreement between a Participant and one or more Authorized Users that establishes and defines restrictions on information access and disclosure, including means for protecting personal privacy and Proprietary Information.
 - d. “*HIPAA*” has the meaning set forth in Section 1.
 - e. “*Other Participant*” shall mean any individual or entity that has signed an agreement materially similar to this Agreement to participate in the ILHIE. “*Other Participant*” also has the meaning set forth in Section 15.
 - f. “*Participant*” shall mean any individual or entity that has signed this Agreement.
 - g. “*Person*” shall mean any individual person or entity.
 - h. “*PHI*” shall mean “protected health information” shared under this Agreement, as that phrase is defined in 45 CFR § 160.103 of the HIPAA regulations.
 - i. “*Proprietary Information*” shall mean all of the materials, information and ideas of a Participant including, without limitation: patient names, patient lists, patient records, patient information, operating methods and information, accounting and financial information, marketing and pricing information and materials, internal publications and memoranda and, if notice thereof is given, other matters considered confidential by a Participant. Proprietary Information shall not include information which: (i) is readily available or can be readily ascertained through public sources; (ii) a Participant has previously received from another party unrelated to this Agreement; (iii) would cause a Participant to be in violation of the law; (iv) negatively impacts Participant’s licensure, accreditation or participation in any federally or State funded healthcare program, including without limitation the Medicare and Medicaid programs; or (v) is information received by a Participant that is used in compliance with Section 3.a. below and integrated into the records of the receiving Participant.
 - j. “*Protected Information*” shall mean PHI and Proprietary Information.
 - k. “*Significant Breach*” shall mean a successful unauthorized access, use, disclosure, modification, or destruction of Protected Information, or unauthorized interference with a Participant’s System, of which such Participant has knowledge or should have knowledge.
 - l. “*State*” shall mean the State of Illinois.
 - m. “*System*” shall mean software, portal, platform, or other electronic medium controlled or utilized by a Participant through which or by which the Participant exchanges information under this Agreement. For purposes of this definition, it shall not matter whether the Participant controls or utilizes the software, portal, platform or other medium through ownership, lease, license, or otherwise.
3. **Use of and Access to Protected Information.**
- a. **Permitted Uses and Disclosures.** The Participant agrees to permit access to the Protected Health Information for the purposes of treatment, payment, and health care operations as those terms are defined in HIPAA. The Participant may reasonably use and disclose Protected Information if necessary for proper management and administration or to carry out their legal responsibilities. The Participant agrees not to access, use or further disclose Protected Information other than as authorized by this Agreement and permitted by law.
 - b. **Authorized Users.** In the event that the Participant has reasonable suspicion of a Significant Breach by any Other Participant or one or more of its Authorized Users, following reasonable request, the Participant suspecting such Significant Breach shall receive from the Other Participant the names of those Authorized Users who have accessed the System of the Participant suspecting the Significant Breach during the relevant period. Such request shall include a brief description of the bases for its suspicions and likely possible dates of such access. If the responding Other Participant is unable to provide a list of those Authorized Users with actual access, it shall provide a

list of all Authorized Users during the relevant period of time. Participant shall use reasonable care in selecting Authorized Users and shall require that they act in compliance with relevant provisions of this Agreement. Participant shall apply appropriate sanctions against any Authorized User who fails to comply with the requirements of this Agreement. Participant shall immediately remove an Authorized User's access to Protected Information if the Authorized User is determined by the Participant to no longer qualify as an "Authorized User." Participant will be responsible for initiating, updating, monitoring, controlling and removing or suspending access of its Authorized Users in accordance with the law and any requirements contained in this Agreement, including but not limited to Section 5. Before allowing access to, use or disclosure of Protected Information, Participant shall require each Authorized User to agree to a Confidentiality Agreement detailing the permitted uses, federal and State compliance requirements and the Authorized User's role and responsibilities. Participant's Authorized User's consent to the Confidentiality Agreement must be logged in an audit trail or otherwise documented. Participant 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.

c. **Access to Protected Information.**

- i. Under this Agreement, the Participant will make available Protected Information maintained in a designated record set that is generally accessible in electronic format and is maintained on the Participant's System. The Participant acknowledges that the Protected Information provided is drawn from numerous sources. Certain categories of information, including but not limited to HIV status, mental health records, substance abuse records and genetic information, may be more sensitive and may be accorded extra protections under State and federal law. For this or other reasons, the Protected Information provided may not include an entire record.
- ii. Participant shall maintain Protected Information on its System for the greater of six years or as required by applicable law.
- iii. The Participant shall provide Protected Information in a timely matter.
- iv. Subject to the provisions of Section 7.a., the Participant understand that this Agreement primarily depends on the Participant to reasonably determine that information disclosed is accurate and complete. If Participant becomes aware of any material inaccuracies in its own Protected Information or System, it agrees to communicate such inaccuracy to affected Other Participants as soon as reasonably possible. Participant shall provide concurrent notice of any impact on the availability of Protected Information for an extended period of time due to changes to its System upon attempted access by any Other Participant. If Participant is unable to provide all information requested due to material inaccuracies, it shall provide a statement with any Protected Information indicating such limitations
- v. In the event that Participant shall agree to place additional restrictions on Protected Information of an individual, Participant shall be solely liable for maintaining such restrictions. Participant agrees and acknowledges that if the Participant receives Protected Information under this Agreement, the Participant may assume that, and treat such Protected Information as if, there are no additional restrictions placed on such Protected Information except as otherwise stated in this Agreement or required by relevant law.

- d. **Ownership.** Disclosure of Protected Information under this Agreement does not change the ownership of such information under State and federal law. If Protected Information

has been used or disclosed for treatment, payment, or health care operations, it may thereafter be integrated in to the records of the recipient. This Agreement does not grant to Participant any rights in the System or any of the technology used to create, operate, enhance or maintain the system of any Other Participant.

4. **Participant Requirements.** Participant, whether providing, receiving or using Protected Information under this Agreement, shall:
 - a. establish and implement appropriate policies and procedures to prevent unauthorized access, use and disclosure of Protected Information and ensure that such policies and procedures do not conflict with and are not less restrictive than this Agreement;
 - b. regularly monitor and audit access to Protected Information and take reasonable steps to pursue, address and mitigate any breach or other privacy and security issues detected by such monitoring;
 - c. notify the affected Other Participants of which Participant has knowledge or reasonably should know, as soon as reasonably possible, of any Significant Breach and take all reasonable steps to mitigate the breach (for purposes of this subsection c., “affected Other Participants” shall include any Other Participant regarding which there is a reasonable possibility that the Other Participant’s System or data on that System could be negatively impacted by the Significant Breach);
 - d. make its internal practices, books, and records relating to uses and disclosures of Protected Information available to the Secretary of the U.S. Department of Health and Human Services or his/her designee, as necessary to comply with HIPAA or other applicable State and federal law;
 - e. provide all Authorized Users with appropriate education and training on the requirements of this Agreement; and
 - f. provide upon request, copies or detailed summaries of its privacy and security policies and procedures to Other Participants.
5. **Privacy and Security Safeguards.**
 - a. Participant will use and maintain appropriate administrative, technical and physical safeguards to protect the confidentiality, integrity, and availability of Protected Information and to prevent the use or disclosure of any Protected Information received from or on behalf of Other Participants other than as permitted or required by federal or State law and this Agreement. To that end, Participant shall: (i) provide for appropriate identification and authentication of Authorized Users; (ii) provide appropriate access authorization; (iii) guard against unauthorized access to Protected Information; and (iv) provide appropriate security audit controls and documentation.
 - b. Participant shall apply appropriate sanctions against any person, subject to the Participant’s privacy and security policies and procedures, who fails to comply with such policies and procedures. The type and severity of sanctions applied shall be in accordance with the Participant’s privacy and security policies and procedures. Participant shall make employees, agents, and contractors aware that certain violations may result in notification by a Participant to law enforcement officials as well as regulatory, accreditation and licensure organizations.
 - c. Participant shall require that its agents, assigns, and affiliates, including without limitation subcontractors, to whom Protected Information is provided under this Agreement, agree to the same restrictions and conditions that apply to the Participant with respect to such information including, without limitation, those set forth in Section 8 below.
 - d. Participant may, at its discretion, deny access to any person, including without limitation any Other Participant or Authorized User, the Participant reasonably believes has accessed, used, or disclosed Protected Information other than as permitted under this Agreement.

- e. The Participant agrees and acknowledges that a minimum standard of privacy and security is required to protect the Protected Information regardless of legal obligations of the Participant. As such, regardless of whether or not a Participant is a “covered entity” or “business associate” as defined under HIPAA, each shall comply with the requirements of HIPAA as though each were a “covered entity” or “business associate” under HIPAA.
6. **Term and Termination.**
- a. **Term.** The term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect for one (1) year from such date. Thereafter, the Agreement will automatically renew for additional one (1) year periods, provided that during any such renewal period, Participant may terminate its own participation in this Agreement without cause by providing thirty (30) days’ prior written notice to the other Participants and OHIT.
- b. **Immediate Termination.** Participant shall have the right to immediately terminate this Agreement if required by Section 9 below or to comply with any legal order, ruling, opinion, procedure, policy, or other guidance issue, or proposed to be issued, by any federal or State agency, or to comply with any provision of law, regulation or any requirement of accreditation, tax-exemption, federally funded health care program participation or licensure which (i) invalidates or is inconsistent with the provisions of this Agreement; (ii) would cause Participant to be in violation of the law; or (iii) jeopardizes the good standing status of licensure, accreditation or participation in any federally or State funded health care program, including without limitation Medicare and Medicaid programs.
- c. **Termination with Cause.** Notwithstanding any other provision of this Agreement, any Participant may terminate its participation in this Agreement if OHIT or Other Participant has materially violated its responsibilities under this Agreement and has failed to secure satisfactory assurances from OHIT or Other Participants within ten (10) days of written notice of such material violation that reasonable steps are being taken to effect a cure, and in any event: (i) such cure will be completed no later than thirty (30) days from notice of such material violation; and (ii) OHIT or the Other Participant has taken reasonable steps to prevent the recurrence of such material violation.
- d. **Termination of Access to Protected Information.** Notwithstanding subsection c. above, Participant reserves the right to terminate immediately any Other Participant’s access to Protected Information at any time if the Participant has reason to believe that any Other Participant has suffered a Significant Breach of the security of its System, improperly disclosing Protected Information or failing to abide by appropriate policies and procedures of the ILHIE.
- e. **Remedies for Breach.** The Participant agrees that money damages may not be a sufficient remedy for any breach of this Agreement regarding the disclosure of Protected Information and that, in addition to all other available legal or equitable remedies, the non-breaching Participant will be entitled to equitable relief, including injunction and specific performance, for any breach of the provisions of this Agreement.
- f. **Effect of Termination.** Upon Participant’s withdrawal or termination, the Protected Information stored by Participant shall no longer be accessible by the Other Participants. Following the termination of this Agreement, any and all Protected Information shall continue to be subject to the provisions of this Agreement with regard to the handling of Protected Information including, without limitation, provisions regarding Proprietary Information, privacy and security.
7. **Warranties and Limitation of Liability.**
- a. OHIT represents, warrants and covenants the following:

- i. The Services shall comply with all federal and state laws, regulations and ordinances pertaining to the service.
 - ii. To the best of OHIT's knowledge the Services shall be of good title and be free and clear of all liens and encumbrances, and not infringe any patent, copyright or other intellectual property rights of any third party.
 - iii. The Services will be free, at the time of delivery, of any harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software).
 - b. Participant acknowledges that the parties will be testing ILHIE Services that are in development, and that OHIT MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES, OR ILHIE OR THEIR PERFORMANCE, CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY PARTICIPANT. The Services and the ILHIE are provided "as is". OHIT does not warrant that the Services or the operation of ILHIE will be uninterrupted or error free. OHIT does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by Participant or any Other Participant, unless such modification is approved or directed by OHIT, (B) use of Software in combination with or on products other than as specified by OHIT, or (C) misuse by Participant or Other Participant. ALL OTHER WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED.
 - c. Participant disclaims all implied and express warranties, conditions and other terms, whether statutory or common law, arising from course of dealing or otherwise. Participant shall not warrant that (i) the performance of a System of delivery of the Protected Information will be uninterrupted or error free or (ii) the content of the Protected Information will be uninterrupted or error free.
 - d. Neither OHIT nor Participant shall be liable to any Other Participant for any consequential, incidental, indirect, punitive or special damages suffered by Other Participants or any other third party. Neither OHIT nor Participant shall be liable for any damages arising out of or related to the acts or omissions of any Other Participant in acquiring, assessing, disclosing or using Protected Information.
 - e. In the event of any breach of any warranty provided in this Agreement relating to the performance of any of the Services, the Participant's sole and exclusive remedy shall be limited to re-performance, repair, or replacement of the nonconforming Service(s) by OHIT.
 - f. Without limiting any other provision of this Agreement, Participant and Authorized Users shall be solely 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 Protected Information. Participant or Authorized User shall not have any recourse against, and each shall waive any claims against, Other Participants and OHIT for any loss, damage, claim or cost relating to or resulting from its own use or misuse of Protected Information.
8. **Software License.**
- a. OHIT grants to Participant for the term of the Agreement a royalty-free, non-exclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to use the intellectual property used in providing Services for the sole purpose of providing the exchange of and access to health information that is (a) created by healthcare providers located within Illinois or (b) created by healthcare providers located outside of Illinois but accessed by or provided to users located within Illinois. THE INTELLECTUAL PROPERTY USED IN PROVIDING SERVICES SHALL NOT BE USED FOR ANY OTHER PURPOSE WHATSOEVER, AND SHALL NOT OTHERWISE BE COPIED

OR INCORPORATED INTO ANY OTHER COMPUTER PROGRAM, HARDWARE, FIRMWARE, OR PRODUCT.

9. **Proprietary Information.**

- a. The Participant acknowledges and stipulate that: (A) during the term of this Agreement, the Participant may be placed in a position to become acquainted with various aspects of the Proprietary Information; (B) the use or disclosure of the Proprietary Information by Participant, except as expressly authorized by the Other Participant for whom the information is Proprietary Information, is prohibited and would cause serious damage; and (C) in addition to being given access to the Proprietary Information, Participant may receive material benefits as a result of this Agreement. Therefore, the Participant agrees as follows:
 - i. During the term of this Agreement and thereafter, Participant shall not, and shall ensure that their Authorized Users, agents, employees, and contractors shall not, without the prior written consent of the Other Participant for whom the information is proprietary, directly or indirectly:
 - A. Divulge, furnish or make accessible to any other person, firm, associate, corporation or other entity, or copy, take or use in any manner, any of the Proprietary Information;
 - B. Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Proprietary Information; or
 - C. Fail to follow the reasonable requests of the disclosing Participant from time to time regarding the confidential and proprietary nature of the Proprietary Information.
 - ii. The Provisions of this Section 9.a. shall survive the expiration or termination of this Agreement.
- b. Remedies shall be available to Participant in the event of a breach of the provisions of Section 9.a. according to the following provisions:
 - i. The Participant agrees that a breach by the Participant of any of the provisions of Section 9.a. of this Agreement would cause irreparable damage to the Participant or Other Participants for whom Protected Information is considered confidential. Therefore, Participant shall be entitled to preliminary and permanent injunctions restraining any Other Participant and/or its Authorized Users, agents, employees and contractors from committing actions provided for in the provisions of Section 9.a. The existence of any claim or cause of action on the part of the Participant or Other Participant and/or its Authorized Users, agents, employees or contractors against the aggrieved Participant or Other Participant, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.
 - ii. The remedies available to Participant under this Agreement are cumulative. Participant may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any others given by law or in equity and may be enforced successively or concurrently.
 - iii. The provisions of this Section 9.b. shall survive the expiration or termination of this Agreement.
- c. Participant has carefully read and considered the provisions of this Agreement and agree that the restrictions set forth in this Agreement, particularly those in Sections 9.a. and b., are reasonably required for the protection of all Other Participants of the ILHIE.
- d. Participant shall apply appropriate sanctions against its Authorized Users, employees, agents and contractors with access to the Proprietary Information who fail to comply with

the requirements of this Section. The type and severity of sanctions applied shall be in accordance with the Participant's confidentiality and disciplinary policies.

- e. **Use of Marks.** Neither OHIT nor Participant shall directly or indirectly hold itself out as or otherwise create the impression that it is sponsored, authorized, endorsed by, affiliated with, or an agent of the other party or affiliate or successor thereof, including but not limited to using the name "ILHIE" or the name of Participant or OHIT, or of any affiliate, or any colorable imitation thereof, or as part of, any ILHIE Service or trade name (collectively, the "Marks") or in any other confusing or misleading manner without the written consent of the other party. The parties acknowledge that all Marks are the exclusive property of the party that is lawfully registered to hold such Marks. Participant may utilize OHIT's Marks with OHIT's prior consent, and as long as it complies with all policies and procedures pertaining to this use prescribed by OHIT from time to time. Participant shall not use the Marks for any other purpose without the express written consent of OHIT.
10. **Agreement's Compliance with Laws and Regulations.** The Participant 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 Participant agrees to attempt to renegotiate in good faith the Agreement to comply with such law(s) to the satisfaction of all Participants.
11. **Insurance.** Participant agrees to obtain and maintain in force and effect reasonable policies of liability insurance or self-insurance to insure itself and its employees, agents, and contractors for liability arising out of activities to be performed under, or in any matter related to, this Agreement. Upon reasonable request Participant shall provide relevant information regarding its policies of insurance including, without limitation, coverage limits.
12. **Notices.** Any notice or other communication required under this Agreement shall be in writing and sent to such address as the Participant shall designate in writing. Notices or communications to or between the Participant and Other Participants 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.
13. **Subrogation.** In the event that Participant (the "Substitute Participant") shall suffer damages due to the actions or omissions of the Other Participant and/or a Person to whom any Other Participant (the "Replaced Participant") has disclosed directly or indirectly (whether by an Authorized User, employee, agent, contractor or other of the Replaced Participant) Protected Information, the Substitute Participant shall be granted a right of subrogation to bring any and all available claims against the Other Participant and/or Person for any damages suffered or likely to be suffered by the Substitute Participant. The Substitute Participant may bring claims against the Other Participant and/or Person as though it were the Replaced Participant and/or OHIT, regardless of whether such claims are tort, contract, equity and/or any other type of claim.
14. **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.
15. **Other Participants.** Upon OHIT's acceptance of any Other Participant in the ILHIE, OHIT shall require such Other Participant to execute and become bound by an agreement materially similar to this Agreement. Upon execution of the materially similar agreement, such party will become an "Other Participant."

16. **Amendment.**

- a. Except as provided in Section 16(b), this Agreement may not be modified, altered, or amended except by written instrument duly executed by Participant and OHIT.
 - b. OHIT reserves the right to amend this agreement without the Participant'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 Participant or OHIT under this Agreement.
 - i. All such amendments made under Section 16(b) shall also apply to the agreements of Other Participants unless barred by federal or state law or the circumstances make it not reasonable for adjustments to be made to those agreements.
 - ii. 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.
 - iii. For non-material amendments, OHIT shall provide notice to the Participant in the form of a revised Agreement and allow the Participant to make objections within five (5) days of receipt of the revised Agreement.
17. **Assignment.** Participant 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 Participant, 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/).
18. **Waiver.** No failure or delay by Participant or OHIT 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.
19. **Integration.** Subject to Section 2 above, this Agreement sets forth the entire and only agreement between the Participant and OHIT 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 Participant.
20. **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.
21. **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.
22. **Relationship of Participants.** 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.
23. **Third-Party Beneficiaries.** This Agreement does not and will not create in any natural person, corporation, partnership or other organization other than the Participant any benefits or rights, and this Agreement will be effective only as to the Participant and its successors and permitted assigns.
24. **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 Participant, Participant shall not be considered in breach of this Agreement. To the extent that any performance by OHIT under this Agreement depends on the receipt of Federal or State funds, OHIT's failure to receive such Federal or State funds shall also constitute a force majeure event.

25. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be considered an original as against the Participant whose signature appears thereon, but all of which taken together will constitute one and the same instrument.
26. **Authority to Sign.** The Participant 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.
27. **Survival.** The respective rights and obligations of the Participant under Sections 3.a. (Permitted Uses and Disclosures), 3.c.ii. (Access to Protected Information), 4.d. (audit), 5.e. (HIPAA), 6.f. (Effect of Termination), 7 (Warranties and Limitation of Liability), 9 (Proprietary Information), 13 (Subrogation), and 14 (Governing Law) of this Agreement shall survive the termination of this Agreement.
28. **Technical Cooperation.** OHIT and the Participant have set forth in Attachment 1 hereto their understanding with respect to the nature and terms of any technical cooperation that is envisioned between OHIT and the Participant with respect to the implementation or use of the Services or the ILHIE.

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

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment 1:

Technical Cooperation

Grantee shall:

OHIT shall:

ATTACHMENT F
HIE White Space Grant Program
Grantee Quarterly Reporting Requirements

Applicant must submit quarterly fiscal and programmatic reports beginning December 2012.

ARRA Related Requirements

- Federal reporting requirements of the ARRA funds stipulate that funding entities (i.e. OHIT) must report all mandatory information (i.e. “subrecipient”) to the HHS/ONC no later than 10 days after the end of the designated calendar quarter.
- Therefore, to comply with ARRA reporting mandates, OHIT will require Grantees funded under this RGA to report electronically on a quarterly basis no later than 5 days after the end of the designated calendar quarter.
 - Grant funds received for the quarter and total funds received to date
 - Grant funds expended for the quarter and total expenditures to date
 - Jobs created/retained (i.e. FTE calculation) for the quarter only
- Grantee agrees to track, account for and report separately on grant award (i.e. ARRA) funds from all other funds. Furthermore, all personnel whose activities are charged to the grant shall maintain separate timesheets to document hours worked for activities related to this award and non-award related activities.
 - Grantees are expected to retain, and provide upon request, documentation supporting all expenditures funded by this grant award.
- Failure to comply with mandatory reporting requirements will cause immediate suspension of funding of this grant, any other grant that applicant has with OHIT, and possible termination of the grant.

Applicant DUNS Number and CCR requirements.

- Federal requirements state that all entities receiving federal funds shall obtain a DUNS (Data Universal Numbering System) number. In addition to a DUNS number, Grantees shall maintain a current (“active”) registration in the Central Contractor Registration (CCR) database, as administered and governed by the System for Award Management (SAM). Each agency participating in the proposed program as a funded partner must provide both a DUNS number and CCR registration in order to successfully comply with quarterly ARRA reporting requirements. Grantees may access more information on the acquisition of a DUNS number and CCR registration at the following websites:
 - Information about a DUNS number can be accessed at <http://www.dnb.com/get-a-duns-number.html> or by calling 1-866-784-3477.
 - Information about SAM (and CCR registration procedures) can be accessed at www.sam.gov or by calling 1-866-606-8220.

Quarterly Progress

- List of white space entities connected to the ILHIE and if applicable, to the proposal’s identified HIE service/solution
- Description of how the connected entities are using HIE services in their delivery of care
- List of successes and best practices
- List of obstacles, challenges and lessons learned