

**UHIN  
MASTER SERVICES AGREEMENT**

This Master Services Agreement (“**Agreement**”) entered into by Utah Health Information Network, Incorporated (“**UHIN**”) and the undersigned (“**Member**”) (collectively, the “**Parties**” and individually, a “**Party**”) is effective as of the Effective Date.

**RECITALS**

- A. UHIN provides secure Software and a Technological Platform or “Services” for exchanging electronic healthcare data for Permitted Purposes, which includes processing or facilitating the processing of healthcare data in connection with certain Standard Transactions and Non-Standard Transactions.
- B. Member is a health care provider or payor (or Business Associate/contractor of a provider or payor) that desires to connect with UHIN in order to receive Services (see **Attachment A**).
- C. This Agreement governs the Parties’ rights and obligations regarding the Services provided by UHIN to Member.

**AGREEMENT**

For adequate consideration, the receipt of which is hereby acknowledged, UHIN and Member, intending to be legally bound, mutually agree to the following terms and conditions (including any attachments), all of which are incorporated herein by reference.

The Parties have executed this Agreement as of the Effective Date.

**MEMBER**

**UHIN**

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

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

Trading Partner  
Number: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

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

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

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

## GENERAL TERMS AND CONDITIONS

### 1. SUBCONTRACTORS

**1.1 UHIN's Use of Subcontractors.** UHIN may contract in writing with subcontractors to assist in the performance of Services, as provided for in this Agreement. UHIN will require that its subcontractors: (a) comply with the applicable terms and conditions of this Agreement and Applicable Law; (b) safeguard any Data to which it has access; (c) as soon as reasonably practicable after determining that a Breach of Protected Health Information associated with Services occurred, report the Breach to UHIN; and (d) reasonably cooperate with UHIN on issues related to this Agreement, under the direction of UHIN. UHIN will be responsible for the performance of its subcontractors when performing any Services. The requirements of this Section supplement UHIN's obligations under any applicable Business Associate agreement.

**1.2 Member's Use of Subcontractors.** To the extent Member uses subcontractors in connection with this Agreement, Member acknowledges and agrees it will be responsible for its subcontractors' performance of and compliance with this Agreement. Member further represents and warrants that it has a valid and enforceable written agreement with each such third party, that requires the third party to, at a minimum: (a) comply with the applicable terms and conditions of this Agreement and Applicable Law; (b) safeguard any Data to which it has access; (c) as soon as reasonably practicable after determining that a Breach of Protected Health Information associated with the Services occurred, report the Breach to Member; and (d) reasonably cooperate with Member on issues related to this Agreement, under the direction of Member.

**1.3 Member as Subcontractor.** To the extent Member is a Business Associate or other contractor that is transmitting, accessing or receiving Data through the HIE or transmitting, accessing or receiving Standard Transactions and/or the content of Standard Transactions through the Network to provide services to, or on behalf of, another member, Covered Entity or other Business Associate, Member: (a) will obtain UHIN's prior written consent to use the HIE or Network for this purpose; (b) will give notice to UHIN identifying each other member, Covered Entity and/or other Business Associate it is providing services to, or acting on behalf of, in connection with Member's use of the HIE or HIE-related Services; (c) upon UHIN's request, will give notice to UHIN identifying each other member, Covered Entity and/or other Business Associate it is providing services to, or acting on behalf of, in connection with Member's use of the Network or Clearinghouse-related Services; (d) represents and warrants that it has a written agreement in place with each other member, Covered Entity or other Business Associate that satisfies the requirements of Applicable Law and the terms of this Agreement; and (e) acknowledges and agrees that UHIN may satisfy its Breach reporting obligations in Section 5.2 to a Source Member or another member, as applicable, for which Member is acting as a Business Associate, by providing the Breach report to Member. Member will provide that Breach report to the Source Member or other member, as applicable. A Member receiving HIE-related Services will immediately notify UHIN when Member is no longer providing services to, or on behalf of, a previously identified other member, Covered Entity or other Business Associate. UHIN may terminate this Agreement immediately upon notification that Member is no longer providing services to, or on behalf of, another member, Covered Entity or other Business Associate.

## 2. REQUIREMENTS

**2.1 Establishment of Requirements.** This Agreement and the Requirements govern UHIN, Member and subcontractor activity, as applicable. The Requirements include operating rules, service descriptions, definitions, standards, specifications, policies and procedures, guidelines and details for the content and Exchange of Data for Services. Member, however, should not infer from UHIN's adoption of the Requirements that they are adequate to meet Member's obligations under Applicable Law. Member should seek and obtain the advice of its own attorneys in evaluating the legal efficacy of the same.

**2.2 Changes to Requirements.** UHIN may change the Requirements from time to time to reflect the availability of new equipment, systems or functionality, changes in Applicable Law or other circumstances affecting Services. Requirements become effective and are binding on Member and other members thirty (30) days after adoption, unless UHIN prescribes an earlier effective date when reasonably necessary to address legal requirements, network security or exigent circumstances. Promptly following the adoption or modification of a Requirement by UHIN. UHIN will provide notice as specified in Section 12.10 and/or by posting notice on its website. If UHIN makes a material change to the Requirements, Member may terminate Services and/or its access to Member's Digital Credentials with thirty (30) days written notice to UHIN as provided for in Section 8.

## 3. AUTHENTICATED USERS; DIGITAL CREDENTIAL MANAGEMENT; ELECTRONIC SIGNATURES

**3.1 Authenticated Users.** Member is responsible for its Authenticated Users and will require that its Authenticated Users abide by the terms of this Agreement that apply to Member. Member acknowledges and agrees to be responsible for all of the following:

a. Identify Authenticated Users; Verify Roles; Access Rights. Member will employ a process by which Member, or its designee, validates sufficient information to uniquely identify each person seeking to become an Authenticated User prior to allowing the issuance of Digital Credentials that would grant the person access to Services and verify the roles and access rights of Authenticated Users by applicable category or position. Member will review, train and approve its employees, agents and contractors before allowing them to become Authenticated Users. Member is responsible for revoking its Authenticated User's Digital Credentials when access to services is no longer appropriate.

**3.2 Digital Credentials.** Access to Services requires Digital Credentials. UHIN will employ a process by which it verifies the Digital Credentials issued to each Authenticated User of Member prior to enabling the Authenticated User's access to Services. Member may not allow persons who are not Authenticated Users to access or use Services. MEMBER WILL SAFEGUARD THE CONFIDENTIALITY AND CONTROL THE USE OF ITS DIGITAL CREDENTIALS. ADDITIONALLY, MEMBER WILL TAKE FULL RESPONSIBILITY FOR AUTHENTICATED USERS' DIGITAL CREDENTIALS AND WILL REQUIRE AUTHENTICATED USERS TO SAFEGUARD THE CONFIDENTIALITY AND CONTROL OF THOSE CREDENTIALS.

**3.3 Signature and Signed Documents.** Member agrees, and will require each of its Authenticated Users to agree, that any Digital Credential of such Authenticated User affixed to or contained in any Data Exchange or Standard Transaction will be sufficient to verify that the particular Authenticated User originated such Data Exchange or Standard Transaction. Any properly Exchanged Data or Standard Transaction made pursuant to this Agreement will be considered a “writing” or “in writing” and any such Data Exchange or Standard Transaction containing, or to which there is affixed, a Digital Credential (“**Signed Documents**”) will be deemed for all purposes: (a) to have been “signed;” and (b) to constitute an original when printed from electronic files or records established and maintained in the normal course of business.

**3.4 Validity of Signed Documents.** Member will not contest the validity or enforceability of Signed Documents under the provisions of any Applicable Law relating to whether certain agreements are to be in writing or signed by the Party to be bound thereby; and Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the Parties to the same extent and under the same condition as other business records originated and maintained in paper form.

#### **4. PRIVACY AND SECURITY; COMPLIANCE**

**4.1 Privacy and Security.** The Parties will implement and maintain commercially reasonable and appropriate administrative, physical and technical safeguards to: (a) protect the confidentiality, privacy, security, integrity and availability of Data, as applicable; (b) protect against reasonably anticipated threats or hazards; (c) prevent improper access, tampering or unauthorized disclosure; and (d) secure compliance with Applicable Law.

**4.2 Compliance with this Agreement.** Except to the extent prohibited by Applicable Law, each Party (and their Authenticated Users, agents and employees) will comply fully with all provisions of this Agreement applicable to the Party.

**4.3 Compliance with the Requirements.** Each Party (and their Authenticated Users, agents and employees) will fully comply with the Requirements, including but not limited to those applicable to the following: (a) formatting Data; (b) Standard Transactions; (c) implementing safeguards and procedures (including audit trails) to satisfy requirements for the security, privacy and accuracy of Data and/or Protected Health Information; and (c) Breach and Security Incident reporting.

#### **4.4 Compliance with Applicable Law.**

a. Each Party (and their Authenticated Users, agents and employees) will fully comply with all Applicable Law, including but not limited to laws relating to Services, the use and disclosure of health information (including Protected Health Information) and the confidentiality, security and privacy of information (including Protected Health Information).

b. Member understands and agrees that it will be solely responsible for its own compliance with Applicable Law, including but not limited to laws related to the preservation, confidentiality, privacy and security of its own information as well as any prohibitions on the use of telecommunications facilities to transmit illegal, obscene, threatening, libelous, harassing or otherwise offensive messages or other otherwise unlawful material. Member further agrees to

provide all supporting documentation requested by UHIN necessary to demonstrate Member's compliance with Applicable Law.

c. When UHIN is acting in the capacity of a Business Associate, it also agrees to comply with the terms of the Business Associate Addendum, attached as **Attachment C**.

**4.5 Subpoenas and Court Orders.** UHIN will notify Member upon UHIN's receipt of any subpoena or court order for Member's health information relating to the CHIE, Network or Services. UHIN and Member agree to cooperate in challenging a subpoena or court order for information generated by or disclosed through the CHIE or the Network in accordance with Applicable Law, may not be subject to discovery, use or receipt in evidence in any legal proceeding of any kind or character.

**4.6 42 C.F.R. Part 2 (Part 2) Compliance.**

a. Applicability. If UHIN does not receive information that is protected by Part 2 ("**Part 2 Information**"), the obligations in this Section will not apply. To the extent that in performing Services for or on behalf of Member, UHIN receives, stores, uses, processes, discloses, maintains, transmits or otherwise deals with Part 2 Information, UHIN acknowledges and agrees that for the purpose of such federal law it: (i) is fully bound by Part 2 with respect to Part 2 Information; (ii) if necessary, will resist in judicial proceedings and/or any efforts to obtain access to Part 2 Information except as permitted by Part 2; (iii) will implement appropriate safeguards to prevent unauthorized uses and disclosures consistent with its obligations in the Business Associate Addendum; (iv) will limit its requests, uses and disclosures of Part 2 Information to the minimum amount necessary to carry out the Services consistent with its obligations in the Business Associate Addendum; and (v) will report any unauthorized uses, disclosures or breaches of Part 2 Information to Member consistent with its obligations in the Business Associate Addendum.

b. Subcontractors. UHIN will only redisclose Part 2 Information without Individual consent to a subcontractor if: (i) Part 2 Information is necessary for subcontractor to assist UHIN with performing Services under this Agreement; (ii) the subcontractor agrees to the same obligations set forth in this Agreement with respect to Part 2 Information; and (iii) the subcontractor only further discloses Part 2 Information back to UHIN or the Member who supplied Part 2 Information, unless otherwise permitted by Part 2.

c. Requirements. Member acknowledges and agrees that UHIN relies on Member to: (i) identify all Part 2 Information that it discloses to UHIN; (ii) have the requisite right and authority to use and disclose Part 2 Information to UHIN; and (iii) only send Part 2 Information to UHIN if permitted by, and in accordance with, the Requirements. With respect to the use of Services, Member alone is responsible for Member's use and disclosure of Part 2 Information.

d. Member as Subcontractor. To the extent Member is a Business Associate, contractor or subcontractor that is transmitting, accessing or receiving Part 2 Information through UHIN's Services, or on behalf of, another member, Covered Entity or other Business Associate, Member acknowledges and agrees that: (i) UHIN and Member are "contract agents" of each other for the limited purpose of providing these services; (ii) UHIN and Member each need Part 2 Information to provide the services; and (iii) Member is bound by the same obligations set forth

in this Section 4.6. “Contract agent” is a term of art used by the Substance Abuse and Mental Health Services Administration to support the exchange of Part 2 Information and does not create or imply any common law agency or other relationship between UHIN and Member.

**4.7 Reliance on Representations.** Member acknowledges that UHIN is relying on the assurances of Member as to: (a) their identity and credentials; (b) the purposes for which they are using Services; and (c) the verification of their right to have access to Protected Health Information (PHI) for Treatment, Payment or Operations. UHIN relies, to a substantial extent, on the representations and undertakings of Member and their authenticated users. Unless set forth otherwise in this Agreement, Member agrees that UHIN will not be responsible for any unlawful access to or use of Data by Member or any other member resulting from Member’s or another member’s: (a) misrepresentations made to UHIN by Member or other member; (b) breach of the Agreement; or (c) violation of the Requirements or Applicable Law.

## **5. BREACH AND SECURITY INCIDENT REPORTING**

**5.1 Member Breach Reporting to UHIN.** If Member discovers a Breach of Protected Health Information (PHI) associated with Services, Member will report the Breach to UHIN as soon as reasonably practical, but in no case later than the timeframe specified in the Requirements. Member will supplement the information contained in the report as it becomes available and cooperate with UHIN in accordance with this Agreement, the Requirements and Applicable Law.

**5.2 UHIN Breach Reporting to Member.** If UHIN discovers a Breach of PHI associated with its Services, UHIN will report the Breach to Member as soon as reasonably practical, but in no case later than the timeframe specified in Applicable Law. UHIN will supplement the information contained in the report as it becomes available and cooperate with affected Member/Source Member(s), as applicable, in accordance with this Agreement (including the Business Associate Addendum, if applicable), the Requirements and Applicable Law.

**5.3 Confidential Information.** Information exchanged pursuant to this Section 5, except PHI, is Confidential Information whether identified as such or not. UHIN and Member each agree to treat the Confidential Information in accordance with Section 6.

**5.4 Breach and Security Incident Reporting.** The Parties will comply with all Requirements regarding Breach and Security Incident reporting. Compliance with Breach and Security Incident reporting under this Agreement may not relieve a Party from its obligations under Applicable Law, including but not limited to state or federal breach notification laws.

## **6. CONFIDENTIAL INFORMATION**

**6.1 Non-Disclosure.** Each Party acknowledges and agrees that during the course of performing this Agreement, each Party may be exposed to or acquire knowledge of the other Party’s Confidential Information. Each Party will safeguard Confidential Information of the other Party with the same degree of care that it exercises with respect to its own information of like importance, but in no event less than reasonable care, and will utilize appropriate safeguards and otherwise exercise reasonable precautions to prevent the unauthorized disclosure of Confidential Information, and to ensure that its employees, agents and contractors also comply with the provisions of this Section. A Party may disclose Confidential Information of the other Party only

to the extent permitted under the terms of this Agreement or as required by Applicable Law, provided that if Member or UHIN receives a request for Confidential Information of the other Party, the Party receiving the request will provide the other Party notice of the request and an opportunity to exercise its rights related to the disclosure. If the Party that received the request is still required by Applicable Law to disclose the Confidential Information of the other Party after that Party has exercised its rights, it will do so only to the minimum extent necessary to comply with Applicable Law and will request that the Confidential Information continue to be treated as such.

**6.2 Public Records.** Members that are Utah Governmental Entities may be subject to the Government Records Access and Management Act (Utah Code Ann. (1953), §§ 63G-2-101 et seq., as amended, “GRAMA”). Under GRAMA, certain records within a governmental entity’s possession or control may be subject to public disclosure. Notwithstanding anything to the contrary in this Agreement, a member that is a Utah Governmental Entity subject to GRAMA may disclose information to the extent required by GRAMA or as otherwise required by Applicable Law.

## **7. SOFTWARE LICENSE**

**7.1 Software.** UHIN may provide Member with the use of software applications, computer programs, digital content, interfaces and other intangible information technology assets (collectively, “Software”). Because technology, health care practices, the Requirements and other factors will change over time, the capabilities of and use of Services may change from time to time. Member will comply with the terms, conditions, restrictions, limitations or other documentation applicable to any Software that it licenses from UHIN or its third-party licensors, to the extent the same are not inconsistent with this Agreement.

**7.2 License.** During the Term, UHIN grants Member and Member accepts:

- a. A royalty-free, non-exclusive, nontransferable, non-assignable, non-sub-licensable and limited right to use Services under the terms of this Agreement.
- b. A non-exclusive, nontransferable (except as provided herein) limited license to use any Software furnished by UHIN or its subcontractors.

**7.3 No Transfer or Modification.** Except as expressly permitted herein, Member will not do any of the following:

- a. Sell, rent, timeshare, sublicense or otherwise share its right to use Services or Software, in whole or in part, to any other person, entity or business;
- b. Modify, reverse engineer, decompile, disassemble or otherwise attempt to learn the source code, structure or ideas upon which Services or Software is based;
- c. Modify or combine the Services with any other software or services not provided or approved in writing by UHIN; or
- d. Modify any security procedures or security software implemented by UHIN.

## 8. TERM, TERMINATION AND SUSPENSION

**8.1 Term.** The initial term of this Agreement will be for a period of one (1) year commencing on the Effective Date (the “**Initial Term**”). Upon the expiration of the Initial Term, this Agreement (or certain terms of this Agreement still in effect) will automatically renew for successive one-year terms (the “**Renewal Terms**”), unless terminated as provided for in this Agreement. (The Initial Term and Renewal Terms are collectively referred to as the “**Term**”.)

**8.2 Termination by either Party without Cause.** The terms of this Agreement, including any Statement of Work (SOW), will remain in effect until terminated by either Party, without cause, with not less than ninety (90) days prior written notice.

**8.3 Termination by UHIN for Cause.** UHIN may terminate this Agreement under any of the following circumstances:

a. If Member fails to comply with any of the material terms or conditions of this Agreement and fails to cure the non-compliance within sixty (60) days of notice;

b. If Member fails to comply with the Requirements and fails to cure the non-compliance within sixty (60) days of notice;

c. Immediately upon notice to Member if UHIN determines in its sole discretion that Member uses or attempts to use the Services for any fraudulent or illegal purpose, including if UHIN determines that Member violated any Applicable Law or would place UHIN at material risk of suffering any sanction, penalty or liability;

d. If Member fails to pay an amount past due sixty (60) days that is not being contested in good faith; or

e. As otherwise provided for in this Agreement. UHIN also has the right to terminate any specific service covered by a Statement of Work (**Attachment D**) as provided for in the Statement of Work or if UHIN is no longer offering or providing support for that service.

**8.4 Member Suspension by UHIN.** Member acknowledges and agrees that UHIN has the right to protect its technical resources, following generally-accepted operational practices. UHIN may immediately suspend Member’s access to Services, with or without terminating this Agreement, if UHIN in its sole discretion determines any of the following:

a. Member uses or attempts to use Services for any fraudulent or illegal purpose, including if UHIN determines that Member has engaged in suspicious activity;

b. Member fails to comply with this Agreement or any of the Requirements;  
or

c. Member’s or its Authenticated User’s acts or omissions create an immediate threat or may cause material harm to any person or entity including but not limited to: UHIN; another member; an Authenticated User; the integrity or operations of Services.

d. UHIN will give notice to Member of such suspension prior to, or if immediate action is required and prevents prior notice, promptly after such action is taken.

**8.5 Termination by Member for Cause.** Member may terminate this Agreement under any of the following circumstances:

a. Within thirty (30) days of any fee increase or material change to the Requirements, Member may terminate this Agreement on thirty (30) days' notice to UHIN providing as the basis for termination that UHIN has increased a fee listed in the fee schedule (**Attachment A**) or that there has been a material change to the Requirements; or

b. As otherwise provided by the terms of the Business Associate Addendum (**Attachment C**).

**8.6 Source Member Suspension of Data for Reasonable Cause.** If Member is a Source Member, Member may suspend providing Data for reasonable cause upon written notice to UHIN. The notice will describe the reason for the suspension. Member will work with UHIN to resolve the reason for the suspension with the intent of resuming the provision of Data as soon as possible.

**8.7 Remedies on Breach.** A non-breaching Party in its sole discretion may take, but is not obligated to take, reasonable steps to cure the other Party's breach, terminate this Agreement or seek other legal remedies.

**8.8 Obligations on Termination.**

a. **Return/Destruction.** Member will, within thirty (30) days of the effective date of termination, and at its sole expense, turn over to UHIN or, if agreed to by UHIN, certify the destruction of, all Confidential Information and property belonging to or provided by UHIN.

**8.9 Obligations on Suspension.** During any period of suspension pursuant to this Section, the Parties will be subject to this Agreement, including but not limited to Member's obligations to pay any membership fees and fees for Services under the terms of this Agreement.

**8.10 Survival.** All obligations that by their nature extend beyond termination will survive the termination of this Agreement, including but not limited to the following:

a. Section 3 (Authenticated Users; Digital Credential Management; Electronic Signatures), Section 4 (Privacy and Security; Compliance), Section 5 (Breach and Security Incident Reporting), Section 6 (Confidential Information), Section 8.9 (Obligations on Termination); Section 9 (Insurance), Section 10 (Mediation), Section 11 (A Federal, State or Local Government/Agency Member), and Section 12 (Miscellaneous) of the GENERAL TERMS AND CONDITIONS;

b. Section 4 (Limited Warranty; Disclaimers; Limitations of Liability) and Section 5 (Indemnification);

c. If applicable, the Business Associate Addendum (**Attachment C**).

## 9. INSURANCE

**9.1. UHIN Insurance.** UHIN will maintain in effect cyber liability insurance coverage with limits of not less than two million dollars (\$2,000,000.00) per occurrence and not less than five million dollars (\$5,000,000.00) in the aggregate.

**9.2. Member Insurance.** Member will maintain in effect policies of liability insurance, including cyber liability coverage, with limits of not less than one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) in the aggregate.

**9.3. Proof of Insurance.** A Party will provide to the other Party (upon request) a certificate of insurance evidencing that such coverage is in effect during the Term of this Agreement.

## 10. MEDIATION

Any claim, dispute or controversy between the Parties arising in connection with or relating to the terms of this Agreement will, if not settled by negotiation, be submitted to non-binding mediation under the rules of the American Arbitration Association then in effect or under other rules and procedures as the Parties may agree. Such negotiation and mediation are confidential and will be treated as settlement negotiations for purposes of applicable rules of evidence. Any demand for mediation will be made in writing and served upon the other Party in the same manner as otherwise provided for notice in this Agreement. The demand will set forth with reasonable specificity the basis of the dispute and the performance or relief sought. The Parties will, within thirty (30) days of receipt of a demand to mediate, confer and select a mediator. The mediation will take place at a time and location mutually agreeable to the Parties and the mediator, but not later than sixty (60) days after a demand for mediation is received. Each Party will bear its own costs of mediation. Compliance with this mediation process will be a condition precedent to the right of either Party to commence legal action in connection with this dispute, except that a Party may, before or during any mediation, apply to a court having jurisdiction for a temporary restraining order or injunction where it believes the relief is necessary to protect its interests or rights.

## 11. MISCELLANEOUS

**12.1 No Exclusion.** UHIN represents and warrants to Member, and Member represents and warrants to UHIN, that neither Party (nor their respective employees or agents providing services under this Agreement) have been placed on the sanctions list issued by the office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. 1320a-7, nor have been excluded from government contracts by the General Services Administration or have been convicted of a felony or any crime relating to health care. UHIN and Member will provide one another immediate notice of any such placement on the sanctions list, exclusion or conviction. Either Party may terminate this Agreement immediately upon notice if the other Party (or its respective employees or agents providing services under this Agreement) becomes sanctioned, excluded or convicted as contemplated by this provision.

**12.2 Record Availability.** As and to the extent required by Applicable Law, upon the written request of the Secretary of the Department of Health and Human Services (the “Secretary”) and the Comptroller General of the United States (“Comptroller General”) and

their designees, UHIN will make available those pertinent books, documents and records necessary to certify the nature and extent of the costs of providing Services under this Agreement. Such inspection will be available for up to four (4) years after the termination of this Agreement. This Section does not obligate UHIN to maintain records in any particular format. No attorney-client, accountant-client or other legal or equitable privilege will be deemed to have been waived by the Parties by virtue of this Section. If UHIN carries out its duties under this Agreement through a subcontract worth Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period with a related organization, the subcontract will contain a provision similar to this Section to permit access to the related organization's books and records by the Secretary, the Comptroller General and their designees. This Section is included pursuant to and is governed by the requirements of 42 U.S.C. §1395x(v)(1)(I) and C.F.R. Title 42, Chapter IV, Subchapter B, Part 420, Subpart D, and the regulations as may be amended from time to time. In the event that this Section does not comply with such provisions, this Section will be automatically reformed to comply and such reformation will be documented in writing and signed by both Parties.

**12.3 Assignment.** Neither UHIN nor Member may transfer or assign its rights or obligations under this Agreement without the prior written consent of the other, except upon thirty (30) days' notice prior to a transfer or assignment to a parent, subsidiary or affiliate, or an entity with which it is merged or consolidated, or the purchaser of all or substantially all of its assets, provided that the transferee/assignee assumes all its obligations under this Agreement. In the event of Member's transfer or assignment to a parent, subsidiary or other entity with which it is merged, consolidated or has purchased all or substantially all of its assets, UHIN reserves the right to immediately terminate this Agreement. Subject to the foregoing, this Agreement will inure to the benefit of and be binding on the Parties' successors and assigns. Any assignment or transfer in violation of the foregoing will be null and void and wholly invalid, the assignee or transferee in any such assignment or transfer will acquire no rights whatsoever, and the non-assigning, non-transferring Party will not be required to recognize, such assignment or transfer.

**12.4 Non-Exclusivity.** This Agreement will not prohibit or restrain either Party's entry into any separate similar or dissimilar contract or agreement with one or more third parties.

**12.5 Construction; Severability.** To the maximum extent possible, this Agreement will be construed as broadly as necessary to comply, and be consistent, with Applicable Law. To the extent the requirements of Applicable Law pertaining to Data and Standard Transactions are not adequately provided for in this Agreement, those requirements are incorporated by reference and will become a part of this Agreement. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of the remaining provisions.

**12.6 Words and Phrases.** When the word "will" is used in this Agreement it imposes a mandatory obligation or requirement. Phrases such as "Party A will take Action X" mean that Party A is required to take Action X. Likewise, phrases such as "Party B will not take Action Y" mean that Party B is prohibited from taking Action Y.

**12.7 Entire Agreement; Modification; Waiver.** This Agreement contains the Parties' entire agreement respecting the subject matter hereof, supersedes and replaces all prior agreements

between UHIN and Member and may be modified only as provided herein or by a signed written document. The Requirements may be modified as provided in this Agreement. This Agreement may not be contradicted by evidence of any alleged oral agreement. No course of dealing or failure or delay in exercising any right, privilege, remedy or option will operate as a waiver of any right, privilege, remedy or option under this Agreement.

**12.8 Governing Law.** Irrespective of the place of performance of this Agreement or the geographical location of Data or the content of any Standard Transaction, this Agreement will be construed, interpreted and enforced in accordance with the substantive laws of the State of Utah, without regard to its or any other jurisdiction's conflict of law principles. The Parties agree that this choice of Utah law as the governing law is a necessary, essential and fundamental term of this Agreement and that but for the application of the laws of the State of Utah to this Agreement, the Parties would not enter into this Agreement.

**12.9 Force Majeure.** No Party will be liable for any failure to perform its obligations in this Agreement where the failure results from any act of God or other cause beyond the Party's reasonable control (including but not limited to any mechanical, electronic or communications failure). The foregoing will not be applicable to Member's obligation to pay any fees under this Agreement or a Party's indemnification obligation.

**12.10 Notice.** Except as otherwise specified herein, all notices must be in writing and sent either by email or United States mail, postage prepaid, to the address of the other Party, which is set forth in this Agreement, or to other addresses as the other Party may designate in writing. Any notice will be deemed to be effective upon delivery. Notice may be waived by mutual written consent of the Parties.

**12.11 Ownership.** Member has no rights of ownership or other property rights in Services or intellectual property, Requirements, information or other materials furnished by UHIN in connection with this Agreement.

**12.12 Use of Trademarks and Trade Names.** Nothing in this Agreement will be deemed to give either Party any right to use the other Party's trademarks, trade names, logos and service marks without the other Party's prior written consent. Notwithstanding the foregoing, the Parties acknowledge and agree that: (a) UHIN may identify Member as a participant of its Services, including use of Member's trademarks, trade names, logos and service marks; and (b) Member may disclose its participation in the Services.

**12.13 Independent Contractors.** UHIN and Member are independent contractors, and neither UHIN nor Member is the employee, agent (actual or ostensible), partner or joint venturer of the other in performing this Agreement. While UHIN provides access to Services to Member, it is not Member's agent and does not act for other members as a general matter.

**12.14 Third-Party Rights.**

a. No Other Rights. This Agreement does not confer any rights or remedies under or by reason of this Agreement on any other persons or entities, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to any

Party to this Agreement, nor will any provision give any third party any right of subrogation or action against any Party to this Agreement, except as expressly provided in this Section.

**12.15 Antitrust Compliance.** Member agrees not to use any information to which it has access under this Agreement to evaluate or set its own prices for services, or otherwise in violation of state or federal antitrust laws and regulations. Member also agrees not to discuss prices with other individuals and entities that are also UHIN Members, or to make any effort collectively to establish prices with other members or others in violation of law.

**12.16 Attorneys' Fees.** The prevailing party in any legal action concerning this Agreement is entitled to recover its reasonable attorneys' fees and costs following a final judgment.

**12.17 Headings.** Section headings are for convenience and will not affect the construction or interpretation of any provisions of this Agreement.

**12.18 Attachments Incorporated.** All applicable attachments, schedules or other items attached hereto are hereby incorporated by reference into this Agreement, as may be amended from time to time as provided for in this Agreement.

**12.19 Order of Precedence.** In case of conflict between provisions of this Agreement, the order of precedence for conflict resolution will be as follows: (a) Business Associate Addendum (**Attachment C**), if applicable; (b) Statement of Work (**Attachment D**) with respect to Services covered by the Statement of Work; (c) Fees and Services (**Attachment A**); (d) any other enforceable attachment or addendum to this Agreement which expressly states that its terms take precedence.

**12.20 Execution of this Agreement.** Each Party represents and warrants that it has full power and authority to enter into and perform this Agreement and has taken whatever measures necessary to obtain all required approvals or consents in order for it to execute this Agreement. The representative signing this Agreement on behalf of a Party affirms that he or she has been properly authorized and empowered to enter into this Agreement on behalf of the Party.

**12.21 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. Facsimile signatures and signatures transmitted by email after having been scanned will be accepted as originals for the purposes of this Agreement.

## **TERMS AND CONDITIONS OF SERVICES**

### **12. DEFINITIONS; INCORPORATION BY REFERENCE**

**1.4** The GENERAL TERMS AND CONDITIONS are incorporated herein by reference.

#### **2.3 Services Provided by UHIN.**

a. Availability. Except as provided for herein, UHIN will make reasonable efforts to provide access to Services to Member twenty-four (24) hours a day, seven (7) days a week and to notify Member in advance of any planned downtime for maintenance or other reasons. However, Member acknowledges and agrees that UHIN may, from time to time in its sole discretion, temporarily suspend access for maintenance, unscheduled interruptions or other reasons. UHIN will use reasonable efforts to reestablish access after such an event. UHIN will not be responsible or liable for any unavailability or interruptions caused by the activities of a Member, including but not limited to those related to a member's system or Data incorrectly transmitted by a Member.

b. Support Services. UHIN will provide standard training in the use of Services. UHIN will provide support and help desk services to Member during normal business hours (Mountain Standard Time), excluding holidays, and limited support services on holidays, weekends and off-hours. Support services and terms are described on UHIN's website. Any changes to the terms of support services become effective thirty (30) days after UHIN publishes such changes on its website or gives notice to Member. UHIN or its subcontractors may provide onsite support requested by Member, for which UHIN may bill at its rates then in effect.

c. Other Services. UHIN may provide other types of agreed-upon services to Member. In such cases, UHIN will bill at its rates then in effect or create a Statement of Work (**Attachment D**), which will be subject to this Agreement and may include additional charges based on the work requested.

## **2.4 Use and Disclosure of Data.**

a. UHIN's Use and Disclosure of Data to Third Parties. UHIN may use and disclose Data to third parties: (i) as provided for in this Agreement, including but not limited to providing Services and access to Data to other members or individuals or entities authorized to access Data for a Permitted Purpose; (ii) as required by law or subpoena and, if applicable, in accordance with Utah Code § 26-1-37; (iii) as directed in writing by a Source Member that supplied the Data; or (iv) to an Individual that is the subject of the Data in accordance with the Business Associate Addendum attached as **Attachment C**, if applicable. UHIN may use and disclose Data to its subcontractors: (i) for the testing, operations and maintenance of Services; (ii) to assist in providing related Services; and (iii) for actions relating to compliance with this Agreement, the Requirements and Applicable Law.

b. Data Transmission. UHIN will transmit Data in a timely manner in accordance with the Requirements. UHIN will not be responsible for misaddressed Data or faulty original Data. If Member receives/accesses any Data that is unintelligible, garbled or not compliant with the Requirements, Member will promptly notify UHIN.

c. Data Management. UHIN will process and manage Data in accordance with the following: (i) the Requirements; (ii) its obligations as a participant under the Data Use and Reciprocal Support Agreement (DURSA) of the Office of the National Coordinator for Health Information Technology, if and when applicable; and (iii) Applicable Law, including but not limited to any operational purposes or audit requirements imposed by the aforementioned. UHIN may combine Data covered by this Agreement with information from other data sources in

connection with its Data Aggregation services, and may disclose Data relating to its Data Aggregation services to third parties to the extent such a disclosure is permitted by Applicable Law. UHIN may also use Data in connection with its Services for maintenance, operations, and Support. Member acknowledges and agrees that UHIN may disclose patient demographic information obtained from Data in connection with the MPI Functions to third parties to the extent permitted by Applicable Law.

d. Reformatting/Recoding. At any time, UHIN may check formatting, perform data validation, mapping and translation, and resolve Data errors to facilitate the Services. At the request of Member, UHIN will reformat or recode Data to comply with the Requirements. In such case, UHIN will have no liability for Member's provision of erroneous Data to UHIN, and UHIN relies on Member's representation that, to Member's knowledge, the Data from Member is valid and accurate.

**2.5 Monitoring and Auditing.** UHIN may monitor and audit all access to and use of Services for system administration, security and other legitimate purposes in accordance with the Requirements. UHIN will conduct system monitoring and audits in a manner that causes the least amount of disruption of operations and prevents any improper use or disclosure of information.

## **13. MEMBER OBLIGATIONS**

### **3.5 Data Exchange.**

a. Use. Member represents and agrees that its use of Services does not violate Applicable Law and that it will access and use UHIN's Software and Services only as specified in this Agreement and in a manner consistent with the Requirements and Applicable Law. Specifically, Member has the following responsibilities related to the use of the Software and Services:

i. To ensure that its use and the use its Authenticated Users, employees, contractors and agents are for a Permitted Purpose and comply with the TERMS, the Requirements and Applicable Law;

ii. To obtain any authorizations or consents required by Applicable Law. (UHIN is not responsible for Member's failure to obtain any authorization or consent required by Applicable Law);

iii. To behave in a manner that does not impact the operations of Services or Software and within generally-accepted security guidelines applicable to the health care industry;

iv. To address problems related to unauthorized use by it or its Authenticated Users, employees, contractors or agents; and

**3.1 To pay all charges incurred for its use. Fees and Payment.** Member will pay UHIN fees for the use of the Network and any Clearinghouse-related Services as set forth in Attachment A, in schedules or in any statement of work (Attachment D) or addenda to this Agreement, plus applicable taxes. UHIN may from time to time change the amount of, or basis

for, the fees charged by providing Member notice of the change, which will be effective sixty (60) days after notice to Member. Except as otherwise expressly agreed to by the Parties, fees are due and payable in full, without deduction or offset, within thirty (30) days from receipt of an accurate invoice. Amounts not paid when due may be subject to an interest rate set by UHIN Board. UHIN may suspend or terminate Network access and Services for nonpayment.

v.

b. Accuracy of Data. Member will retain all information and content that it transmits to UHIN and ensure that its Data is an accurate representation of the information contained in Member's system.

c. Prohibited Uses. Member represents and agrees not to use the Services or Software for a purpose not expressly permitted by the TERMS and this Agreement. Specifically, Member agrees:

i. To not sell, resell, use or access the Software or Services, in whole or in part, to any other third party or to perform services for third parties (except a parent, subsidiary or affiliate) without UHIN's prior written consent;

ii. To not use the Services, Data Exchange, or the Software for the purpose of exploiting the information of Source Members for Member's own personal gain or commercial purposes, including aggregating Data or Data mining from other Source Members for commercial use or exploitation by third parties;

iii. To not reproduce, publish or distribute content that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy or other personal or proprietary right;

iv. To not abuse or misuse Software or Services, including but not limited to gaming or attempting to gain unauthorized access or altering or destroying information, except in accordance with accepted practices;

v. To not permit the introduction of any program, routine or data that does or may disrupt or in any way impede the operation of UHIN's Software or Services.

**3.2 User Member Obligations.** If Member is acting in the capacity of a User Member, Member agrees and acknowledges that:

a. Member is responsible for the Exchange of all Data through its Account;

b. Member and its Authenticated Users will only access and use Data for a Permitted Purpose and in accordance with the Requirements and Applicable Law, including but not limited to the HIPAA minimum necessary requirements set forth in 45 C.F.R. § 164.514. Nothing in this Agreement will prevent a User Member from entering into a separate agreement with a Source Member to access and use that Source Member's information for another purpose;

c. Data provided by, or through, Services may be drawn from numerous sources. Data made available through Services may not be complete, accurate or correlated with the correct Individual;

d. Member may not rely solely on Data accessed through the Services in providing health care to an Individual, but will exercise professional judgment and responsibility in evaluating the Data and obtain whatever information is necessary for the proper treatment of an Individual;

e. Member is solely responsible for its own professional judgment and decisions and actions taken or not taken involving medical care, utilization management and quality management for an Individual, resulting from, or in any way related to, the use of the Services, the Requirements, this Agreement or Data made available thereby;

f. Neither UHIN, nor any of the other members, by virtue of executing this Agreement, assumes any role in the care of any Individual; and

g. Member and its Authenticated Users will not make any representation to any Individual or other person or entity that is inconsistent with the provisions of this Section 3.3.

**3.3 Source Member Obligations.** If Member is acting in the capacity of a Source Member, Member agrees and acknowledges that:

a. UHIN is authorized to use and disclose Member's Data for Permitted Purposes;

b. Data provided by Member can be related to source records maintained by Member;

c. Whenever Data Member provides via Data Exchange it does so in compliance with Applicable Law, this Agreement and the Requirements, including that Member has sufficient, appropriate legal authority for making the Data available through the Data Exchange for Permitted Purposes, including but not limited to any consent or authorization, if required by Applicable Law. Member may withhold certain Data or instruct UHIN to withhold certain Data from being made available via Data Exchange in order to comply with this requirement;

d. Member will exercise reasonable efforts to ensure that Data is an accurate representation of the health information contained in or available through, its system at the time of submission, but Member is not responsible or liable for health information supplied by third parties; and

e. Member will promptly correct all of its data errors known to Member in accordance with the Requirements.

**3.4 eHealth Exchange and the Data Use Reciprocal Support Agreement (DURSA).** UHIN participates in the eHealth Exchange network, which facilitates health information exchange across the country. As a condition of participation, UHIN has signed the DURSA and is required to obtain Member's agreement to comply with certain provisions in the DURSA for Member's

communications using the eHealth Exchange network. Member agrees to comply with the following additional provisions when using and disclosing Data with the eHealth Exchange network:

a. Cooperation. Member will reasonably cooperate with UHIN on issues related to the DURSA, including but not limited to: (i) periodic audits and/or monitoring by UHIN to ensure Member's compliance with this Section 3.5; and (ii) information gathering and documentation related to Member's use of the HIE to use and disclose Data with eHealth Exchange, including for the purpose of investigating any Breach involving a Source Member's Data;

b. Use of eHealth Exchange. When Member accesses Data through eHealth Exchange, such access will be done in accordance with this Agreement and be for one of the purposes permitted by the DURSA (but only if it is also a Permitted Purpose under this Agreement), see [https://sequoiaproject.org/wp-content/uploads/2017/01/Restatement I of the DURSA 9.30.14 final.pdf](https://sequoiaproject.org/wp-content/uploads/2017/01/Restatement_I_of_the_DURSA_9.30.14_final.pdf) (all subsequent amendments are incorporated herein by reference).

c. Use of Data Received. With regard to Data that Member receives through the eHealth Exchange, Member will comply with the terms and conditions of the DURSA. Members who access Data via the eHealth Exchange may retain, use and re-disclose such Data in accordance with Applicable Law and Member's record retention policies and procedures.

d. Termination of DURSA. If UHIN's DURSA is terminated for any reason, Member will no longer have any right to use and disclose Data through the eHealth Exchange utilizing the HIE. This restriction does not apply to Data accessed prior to termination.

## **14. LIMITED WARRANTY; DISCLAIMERS; LIMITATIONS OF LIABILITY**

### **4.8 Limited Warranty.** UHIN warrants that:

- a. It will transmit Data promptly and in a timely manner.
- b. It will accurately display Data as provided by Source Members consistent with the Requirements.

If UHIN fails to timely or accurately display Data, UHIN's sole responsibility will be to use commercially reasonable efforts to repair the defect or provide a reasonable work-around. This is Member's sole remedy for breach of this limited warranty.

**4.9 DISCLAIMER OF SOURCE MEMBER DATA.** UHIN MAKES NO REPRESENTATION OR WARRANTY THAT THE DATA PROVIDED BY SOURCE MEMBERS WILL BE TIMELY, CORRECT OR COMPLETE.

**4.10 DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, UHIN MAKES NO WARRANTIES REGARDING SOFTWARE, SERVICES OR DATA, EACH OF WHICH IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT

NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. UHIN DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION, COMPATIBILITY WITH ANY PARTICULAR HARDWARE OR SOFTWARE OR INTERCONNECTIBILITY WITH OTHER NETWORKS OR SYSTEMS. UHIN DISCLAIMS LIABILITY RELATING TO ITS OR ITS MEMBERS' CONNECTION TO THE INTERNET OR INTERNET SERVICE PROVIDERS.

**4.11 Carrier Lines.** Each Party acknowledges that access to the Services and Software are provided over various facilities, communications lines, routers, switches and other devices owned, maintained and serviced by third-party carriers, utilities, Internet service providers and other service providers (collectively, "**Carrier Lines**"), all of which are beyond the Parties' control. No Party is liable for any delay, failure, interruption, interception, data loss, transmission or corruption of any Data or other information transmitted on the Carrier Lines that are beyond the Party's control. Provided a Party uses reasonable security measures, no less stringent than those in the Requirements, that Party is not liable for any damages relating to the integrity, privacy, security, confidentiality or use of any information while it is transmitted on the Carrier Lines.

#### **4.12 LIMITATION OF LIABILITY.**

a. EXCEPT AS OTHERWISE SET FORTH IN THE TERMS, IT IS EXPRESSLY AGREED THAT IN NO EVENT WILL MEMBER OR UHIN BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUES, LOSS OF USE OF INFORMATION OR DATA, DAMAGE TO BUSINESS REPUTATION OR GOODWILL OR SIMILAR DAMAGES, WHETHER A CLAIM OF LIABILITY OR FOR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORIES OF LIABILITY, EVEN IF UHIN OR MEMBER HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF LIABILITY OR DAMAGES.

b. UHIN'S AGGREGATE LIABILITY UNDER THE TERMS TO MEMBER UNDER CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHER LEGAL THEORY, REGARDLESS OF THE ACTION, WILL NOT EXCEED TWO MILLION DOLLARS (\$2,000,000).

**4.13 Not a Medical Service.** UHIN does not make clinical, medical or other decisions. The Services is not a substitute for professional judgment applied by Member or its Authenticated Users.

## **15. INDEMNIFICATION**

### **5.5 Indemnification of Member by UHIN.**

a. Intellectual Property Infringement. Subject to the limitations set forth in this Section, Section 4 of the TERMS and Section 11 of the GENERAL TERMS AND CONDITIONS, UHIN will indemnify and defend, with counsel of UHIN's choosing, Member, against all claims that the use of Software or Services by Member infringes any patent, copyright or trademark or is a misappropriation of any trade secret ("**Infringement Claim**"); provided that Member notifies

UHIN promptly upon discovery of the Infringement Claim and gives UHIN complete authority and control of, and fully cooperates with UHIN in, the defense and settlement of the Infringement Claim. UHIN will have no liability (including no indemnification obligations or duty to defend) for any Infringement Claim arising out of or relating to: (i) the use of Services or Software outside the scope of the TERMS; (ii) modification of Services or Software by Member or its Authenticated Users; (iii) use of a superseded or prior version of Software if the infringement would have been avoided by the use of a new version which UHIN made available to Member; or (iv) the use of Services or Software in combination with any other software, hardware or products not supplied by UHIN. The remedy in this Section is Member's sole and exclusive remedy and UHIN's sole liability regarding any Infringement Claim.

b. Negligence; Breach; Violation of Applicable Law. Subject to the limitations set forth in this Section, Section 4 of the TERMS and Section 11 of the GENERAL TERMS AND CONDITIONS, UHIN will indemnify and defend, with counsel of UHIN's choosing, Member, its employees, directors, agents and contractors (collectively, "**Member Indemnitees**") for, from and against all Member Losses (defined below) to the extent caused by UHIN's own negligent act or omission or breach of the TERMS, including but not limited to any privacy or security violation (collectively, a "**Member Claim**"). Subject to the foregoing, UHIN will pay (i) all reasonable breach notification costs which are required by Applicable Law and incurred as the result of UHIN's Breach, (ii) all court costs, fines, damages and attorneys' fees finally awarded against a Member Indemnitee as a result of the Member Claim, and (iii) any settlement of the Member Claim (collectively, "**Member Losses**"); provided that the Member Indemnitee notifies UHIN promptly upon discovery of the Member Claim and gives UHIN complete authority and control of, and fully cooperates with UHIN in, the defense and settlement of the Member Claim. UHIN will have no liability (including no indemnification obligations or duty to defend) for any Member Claim arising out of or relating to: (i) a Member Indemnitee's use of the Software and Services not in compliance with the TERMS, the Requirements or Applicable Law; or (ii) UHIN's use and disclosure of Data that is in accordance with Utah Code § 26-1-37. Nothing in this Section is intended to create any liability or impose any obligation on UHIN for the acts or omissions of a Member Indemnitee or any other member, or to restrict a Member Indemnitee from participating in the defense or settlement of any Member Claim at Member's own cost.

**5.6 Indemnification of UHIN by Member.** Subject to the limitations set forth in this Section, Section 4 of the TERMS and Section 11 of the GENERAL TERMS AND CONDITIONS, Member will indemnify and defend, with counsel of Member's choosing, UHIN, its employees, directors, agents and contractors (collectively, "**UHIN Indemnitees**") for, from and against all UHIN Losses (defined below) to the extent caused by Member's own negligent act or omission or breach of the TERMS, including but not limited to any privacy or security violation (collectively, a "**UHIN Claim**"). Subject to the foregoing, Member will pay (a) all reasonable breach notification costs which are required by Applicable Law and incurred as a result of Member's Breach, (b) all court costs, fines, damages and attorneys' fees finally awarded against UHIN as a result of the UHIN Claim, and (c) any settlement of the UHIN Claim (collectively, "**UHIN Losses**"); provided that UHIN notifies Member in promptly upon discovery of the UHIN Claim and gives Member complete authority and control of, and fully cooperates with Member in, the defense and settlement of the UHIN Claim. Nothing in this Section is intended to create any liability or impose any obligation on Member for the acts or omissions of UHIN or any other

member, or to restrict UHIN from participating in the defense or settlement of any UHIN Claim at UHIN's own cost.

**5.7 User Member to Source Member Indemnification.** Subject to the limitations set forth in this Section, Section 4 of the TERMS and Section 11 of the GENERAL TERMS AND CONDITIONS, when Member is acting in the capacity of a User Member for Data Exchange under the TERMS, User Member will indemnify and defend, with counsel of User Member's choosing, the Source Member from which User Member obtained the Data, and such Source Member's employees, directors, agents and contractors (collectively, "**Source Member Indemnitees**") for, from and against all Source Member Losses (defined below) that result from, and to the extent caused by, User Member's or its Authenticated User's negligent act or omission in the use of that Source Member's Data; User Member's or its Authenticated User's medical malpractice resulting from the use of that Source Member's Data; or User Member's or its Authenticated User's breach of the TERMS (including but not limited to Section 3.2 through 3.5), the GENERAL TERMS AND CONDITIONS (including but not limited to Section 1, Section 2.3, or Section 3 through Section 5) or any violation of Applicable Law by User Member or its Authenticated User (collectively, "**Source Member Claim**"). Subject to the foregoing, User Member will pay (a) all reasonable breach notification costs which are required by Applicable Law and incurred as a result of its Breach, (b) all court costs, fines, damages and attorneys' fees finally awarded against the Source Member as a result of the Source Member Claim, and (c) any settlement of the Source Member Claim (collectively, "**Source Member Losses**"); provided, however, that the Source Member notifies User Member promptly upon discovery of the Source Member Claim, and gives User Member complete authority and control of, and fully cooperates with User Member in, the defense and settlement of the Source Member Claim. Nothing in this Section is intended to: (i) create any liability or obligations on either a User Member or a Source Member for the acts or omissions of UHIN or any other Source Member, User Member or their authenticated users; (ii) restrict any Source Member or other member from participating in the defense or settlement of any Source Member Claim at that member's own cost; or (iii) prevent any member, as the third party beneficiary to a Participation Agreement, from recovering its damages, costs, and attorneys' fees resulting from the other member's breach of its Participation Agreement.

## **16. HIPAA TRANSACTIONS**

With respect to HIPAA Transactions, the Parties agree that this Agreement does not do any of the following: (i) change the definition, data condition, or use of a data element or segment in a HIPAA Transaction, except where necessary to implement a state or federal law, or to protect against fraud and abuse; (ii) add any data elements or segments to the maximum defined data set; (iii) use any code or data elements that are either marked “not used” in the standard’s implementation specification, or are not in the standard’s implementation specification; or (iv) change the meaning or intent of the standard’s implementation specification(s). The Parties agree and understand that a Party might request an exception from the uses of a standard as permitted by 45 C.F.R. § 162.940, and, if such an exception is sought, the Parties agree to test any modification resulting from such exception.

**ATTACHMENT A: SERVICES & FEES**

**PROVIDER MEMBERSHIP AND SERVICE FEES**

UTRANSEND fees, UHIN’s core administrative services, are based on the annual volume of claims and the clinic type.

**Do not remit payment at this time; you will be invoiced.**

<b>Provider/Clinician Membership Fees</b>	
<b>Annual Claim Volume Categories</b>	<b>Member Annual Fee</b>
1 - 35	Free
<b>(There will be a onetime set-up fee of \$20 for the above category)</b>	
36 - 700	\$70
701 - 1,500	\$140
1,501 - 4,500	\$250
4,501 - 8,900	\$440
8,901 - 17,000	\$850
17,001 - 27,000	\$1,350
27,001 - 40,000	\$1,800
40,001 - 68,000	\$3,200
68,001 - 200,000	\$5,400
200,001 - 500,000	\$8,700
500,001 - 700,000	\$14,400
>700,001	\$27,900
(Integrated Health System)	\$41,747

<b>UDOH, Community Center, Indian Nation Clinics Membership Fees</b>	
<b>Annual Claim Volume Categories</b>	<b>Member Annual Fee</b>
0-600	Free
<b>(There will be a onetime set-up fee of \$20 for the above category)</b>	
601 - 1,200	\$60
1,201 - 6,000	\$120
6,001 - 24,000	\$240
24,001 - 60,000	\$420
60,001 - 90,000	\$840
90,001 - 120,000	\$3,600
> 120,000	\$9,360

<b>ERA only or Eligibility only Fees</b>
One-third the fee of the associated fee category (see above)

## ATTACHMENT B: DEFINITIONS

**“Account”** means the access management mechanism that UHIN provides to Member through which Member and its Authenticated Users authenticate themselves in order to access or use Software and Services.

**“Applicable Law”** means federal, state and local statutes and regulations that are applicable to Member or UHIN.

**“Authenticated User”** means a natural person (not a corporation, limited liability company, partnership, association or other entity) who is Member or who Member identifies and authorizes to have permission to use the Services under the terms of this Agreement.

**“Authorization”** has the meaning and includes the requirements set forth at 45 C.F.R. § 164.508 and includes any similar but additional requirements under Applicable Law.

**“Breach”** will have the meaning given to it under Applicable Law, including but not limited to 45 C.F.R. § 164.402 and Utah Code § 13-44-102.

**“Business Associate”** is defined as it is in 45 C.F.R. § 160.103.

**“Confidential Information”** means proprietary or confidential materials or information disclosed in any medium or format that a Party designates as such. Confidential Information includes, but is not limited to: (i) designs, drawings, procedures, trade secrets, processes, specifications, source code, system architecture, processes and security measures, research and development, including but not limited to research protocols and findings, passwords and identifiers, new products and marketing plans; (ii) proprietary financial and business information; (iii) Digital Credentials; and (iv) other information or reports provided to a Party pursuant to this Agreement, which by their nature or the circumstances of disclosure would normally be considered confidential. Notwithstanding any label to the contrary, Confidential Information does not include: (i) Data and Standard Transactions (ii) any information which is or becomes known publicly through no fault of a recipient; (iii) is disclosed by a third party entitled to disclose it; (iv) is already known by the recipient before receipt by such Party as documented by the Party’s written records; or, (v) is independently developed or discovered without reference to, reliance on or use of, the Confidential Information.

**“Covered Entity”** is defined as it is in 45 C.F.R. § 160.103.

**“Data”** means any information or data transmitted by Member or UHIN by electronic means via telecommunications, including but not limited to Protected Health Information.

**“Digital Credentials”** means mechanisms that enable Member and its Authenticated Users to electronically prove identity, authenticate themselves and demonstrate that they have permission to use the Software or Services. Digital Credentials may consist of user names, passwords, symbols, tokens or codes.

**“Effective Date”** means the last signature date that this Agreement is executed by UHIN or Member.

**“eHealth Exchange”** is a group of federal agencies and non-federal organizations that securely share clinical information over the Internet across the United States, under a common set of standards, legal agreement and governance.

**“Health Care Operations”** is defined as it is in 45 C.F.R. § 164.501.

**“HIPAA Regulations”** means the Health Insurance Portability and Accountability Act (**“HIPAA”**) Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E (**“Privacy Rule”**), the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (**“Security Rule”**), the HIPAA Breach Notification Rule, 45 C.F.R. Part 164, Subpart D (**“Breach Notification Rule”**), and the HIPAA Transaction Rule, 45 C.F.R. Part 160 and 162 (**“Transaction Rule”**), all as amended from time to time.

**“Individual”** means a person who is the subject of the Data or Protected Health Information. For purposes of individual rights set forth in the Business Associate Addendum (**Attachment C**), the term “Individual” includes, with respect to individuals under legal disability, the parent(s), guardian or other legally authorized representative of such person.

**“Individually Identifiable Health Information”** is defined as it is in 45 C.F.R. § 160.103.

**“Non-Standard Transaction”** means an electronic communication, whether transmitted in batch or real-time mode, that is not properly formatted and addressed in accordance with the applicable Requirements.

**“Payment”** is defined as it is in 45 C.F.R. § 164.501.

**“Permitted Purpose”** includes the following uses and disclosures of Data:

1. Treatment of the Individual who is the subject of the Data;
2. Payment activities of the health care provider for the Individual who is the subject of the Data;
3. Health Care Operations of a Covered Entity, provided that (a) the Covered Entity has (or had) a relationship with the Individual who is the subject of the Data being requested and the Data pertains to that relationship; and (b) the purpose of the exchange is for the Health Care Operations listed in paragraphs (1) or (2) of the definition of Health Care Operations at 45 C.F.R. § 164.501, or health care fraud and abuse detection or compliance of such Covered Entity;
4. Disclosure by a Source Member to a Public Health Authority for public health activities pursuant to 45 C.F.R. §§ 164.512 or 164.514(e);
5. To demonstrate promoting of interoperability (formerly called meaningful use) of certified electronic health record technology;
6. Pursuant to an Authorization, including an Authorization for Social Security Administration determinations and life insurance determinations;

7. Disclosure to the Office of the Medical Examiner for medical examiner services, including cause of death or other duties as authorized by law;
8. Use and disclosure of de-identified claims data (by UHIN) to improve predictive analytics;
9. Use and disclosure of de-identified clinical data (by UHIN) for the surveillance of influenza; or
10. Any other purpose approved by UHIN, provided that the Source Member has given its consent, and the use or disclosure is allowed under Applicable Law.

**“Point of Exchange”** means the logical location designated by UHIN for delivery or receipt of Standard Transactions and Non-Standard Transactions.

**“Protected Health Information”** or **“PHI”** will have the broadest meaning given to it under all Applicable Law, including but not limited to the definition found in 45 C.F.R. § 160.103, all Individually Identifiable Health Information transmitted or maintained in any form or medium by a Covered Entity or Business Associate and “personal information” as defined in Utah Code 13-44-102.

**“Public Health Authority”** is defined as it is in 45 C.F.R. § 164.501.

**“Requirements”** are those standards, specifications, policies, procedures and guidelines adopted by UHIN and its Members (*see* Section 2 of the GENERAL TERMS AND CONDITIONS) or standards that are required by Applicable Law. Requirements may be accessible on UHIN’s website.

**“Security Incident”** is defined as it is in 45 C.F.R. § 164.304.

**“Services”** means access to UHIN’s network or Software for exchanging electronic healthcare data for Permitted Purposes, which includes facilitating the processing of healthcare data in connection with certain Standard Transactions and Non-Standard Transactions.

**“Software”** is UHIN’s intellectual property that enables or facilitates use of Services by Member.

**“Source Member”** is a person or entity that has entered into an Agreement and makes Data available through Services.

**“Standard Transaction”** means the transmission of information to carry out financial or administrative activities relating to health care, including HIPAA “transactions” as defined in 45 C.F.R. § 160.103 (**“HIPAA Transaction”**) and electronic data interchanges governed by Utah’s Health Billing Rule, Utah Admin. Code § R590-164.

**“Treatment”** is defined as it is in 45 C.F.R. § 164.501.

**“User Member”** is a person or entity that has entered into an Agreement and will access or receive Data from or through Services or Software. The term “User Member” includes a User Member’s Authenticated Users.

## ATTACHMENT C: BUSINESS ASSOCIATE ADDENDUM

When UHIN is acting in the capacity of a Business Associate or Subcontractor Business Associate, UHIN and Member agree to the terms and conditions of this Business Associate Addendum in order to comply with the rules on handling of Protected Health Information (PHI), as defined in 45 C.F.R. § 160.103, under the HIPAA Regulations.

1. **DEFINITIONS.** Unless otherwise provided, all capitalized terms in this Business Associate Addendum will have the same meaning as provided in the HIPAA Regulations or the Master Services Agreement (“**Agreement**”), including any attachments to the Agreement. For purposes of this Business Associate Addendum, PHI includes only Individually Identifiable Health Information provided to UHIN by Member for the Services under the Agreement, or that was otherwise created or received by UHIN on behalf of Member.
2. **USES AND DISCLOSURES OF PHI.** UHIN may not use or disclose PHI in a manner that would violate the Privacy Rule or Security Rule if done by Member, except for the specific uses and disclosures set forth in this Business Associate Addendum and as permitted by Applicable Law. UHIN will use or disclose PHI only for those purposes necessary to perform Services under the Agreement or as otherwise permitted in the Agreement (including this Business Associate Addendum) or as required by Applicable Law. UHIN agrees that anytime it provides PHI to a Subcontractor to perform Services or that creates, receives, maintains or transmits PHI on behalf of UHIN, UHIN first will ensure that each such Subcontractor agrees to substantially the same terms, conditions and restrictions on the use and disclosure of PHI as contained in the Business Associate Addendum.
3. **UHIN’S USE OR DISCLOSURE FOR UHIN’S OWN PURPOSES.** UHIN may use PHI for UHIN’s management and administration or to carry out UHIN’s legal responsibilities. UHIN may disclose PHI to a third party for such purposes only if: (a) the disclosure is required by Applicable Law; or (b) UHIN secures written assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) use or disclose the PHI only as required by Applicable Law or for the purposes for which it was disclosed to the recipient; and (iii) notify UHIN of any breaches in the confidentiality of the PHI.
4. **DATA AGGREGATION AND DE-IDENTIFICATION SERVICES.** UHIN may use PHI to perform Data Aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including Data Aggregation services involving Data from Services and other sources of information, and UHIN may disclose information (including PHI) relating to its Data Aggregation services to third parties to the extent such a disclosure is permitted under the Law. UHIN also may de-identify PHI and disclose de-identified PHI in accordance with 45 C.F.R. § 164.514, as permitted in the Agreement or if requested by Member. UHIN may use and disclose such de-identified data for its own purposes, including (a) to perform management and administrative functions, and (b) internally for the development of improved or future functionality of Services.

5. **MINIMUM NECESSARY REQUIREMENTS.** As applicable and to the extent practicable, UHIN will make reasonable efforts to limit requests for and the use and disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of such use, disclosure or request in accordance with the Privacy Rule.
6. **SAFEGUARDS.** UHIN will implement and maintain appropriate safeguards to help prevent any use or disclosure of PHI for purposes other than those permitted by the Agreement and this Business Associate Addendum. UHIN also will implement administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any Electronic PHI that UHIN creates, receives, maintains and transmits on behalf of Member. UHIN will comply with the applicable requirements of the Security Rule.
7. **REPORTING UNAUTHORIZED USES OR DISCLOSURES, SECURITY INCIDENTS AND BREACHES.**
  - (a) Reporting Unauthorized Uses and Disclosures. With respect to PHI supplied by or created on behalf of Member, UHIN will report in writing to Member any use or disclosure of PHI for purposes other than those permitted by the Agreement and this Business Associate Addendum. UHIN will make this report promptly, but in no case later than the timeframe specified in the Requirements.
  - (b) Reporting Security Incidents. With respect to PHI supplied by or created on behalf of Member, UHIN will report in writing to Member any Security Incident of which UHIN becomes aware in accordance with this Business Associate Addendum and the Requirements. UHIN will report successful Security Incidents promptly, but in no case later than the timeframe specified in the Requirements. UHIN also will report the aggregate number of unsuccessful Security Incidents upon request; provided such requests are made no more than once per month. If the definition of Security Incident under the HIPAA Regulations is amended to remove the requirement for reporting unsuccessful attempts to use, disclose, modify or destroy Electronic PHI, the portion of this subsection addressing the reporting of unsuccessful Security Incidents will no longer apply as of the effective date of such amendment.
  - (c) Reporting Breaches of Unsecured PHI. With respect to PHI supplied by or created on behalf of Member, if UHIN discovers a Breach of Unsecured PHI that UHIN accesses, maintains, retains, modifies, records, stores, destroys or otherwise holds, uses or discloses, UHIN will report such Breach as required by the Breach Notification Rule and as provided in the Agreement (*see* Section 5 of the GENERAL TERMS AND CONDITIONS) and the Requirements.
8. **INDIVIDUAL ACCESS TO PHI.** UHIN will make PHI available in accordance with 45 C.F.R. § 164.524.
9. **AMENDMENT OF PHI.** UHIN will make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.

10. **ACCOUNTING OF DISCLOSURES.** UHIN will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
11. **DELEGATION OF OBLIGATIONS.** To the extent UHIN is to carry out Member's obligations under the Privacy Rule, UHIN will comply with the requirements of the Privacy Rule that apply to Member's compliance with such obligations.
12. **ACCESS TO BOOKS AND RECORDS.** UHIN will make its internal practices, books and records on the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services to the extent required for determining Member's compliance with the Privacy Rule. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by UHIN or Member as a result of this Section.
13. **TERMINATION.** Either Party may terminate the Agreement (or terminate specific Services under the Agreement) and this Business Associate Addendum in accordance with the Agreement (*see* Section 8 of the GENERAL TERMS AND CONDITIONS). Member may also terminate the Agreement and this Business Associate Addendum if UHIN breaches a material term of this Business Associate Addendum and fails to cure the breach within thirty (30) days of the date of notice of the breach. Further, Member will have all termination rights as required and set forth at 45 C.F.R. §§ 164.504(e)(1) and 164.314(a)(1).

**RETURN OR DESTRUCTION OF PHI.** Upon termination of the Agreement (or termination of specific Services under the Agreement) and this Business Associate Addendum, if feasible, UHIN will return or destroy all PHI received from Member, or created or received by UHIN on behalf of Member, that UHIN still maintains in any form and retain no copies of such information. Notwithstanding the foregoing, Member understands and agrees that UHIN may determine in its sole discretion that it is not feasible for UHIN to return or destroy PHI upon termination of the Agreement (or termination of specific Services under the Agreement). If UHIN does not return or destroy PHI upon termination, UHIN will continue to follow the provisions of this Business Associate Addendum and will limit its use or disclosure of PHI to those purposes that make the return or destruction of PHI infeasible.