



# Health Information Exchange Legal Work Group

October 10, 2023



**Jason Weida, Secretary**  
 Agency for Health Care  
 Administration

**Members**

**Will Armstrong**  
 Agency for Health Care  
 Administration – HIPPA  
 Officer

**Melanie Brown-Wooffter**  
 Florida Behavioral Health  
 Association –  
 President/CEO

**William Dillon**  
 Gunster Insurance  
 Coverage & Litigation –  
 Shareholder

**Ammon Fillmore**  
 AdventHealth – Associate  
 Chief Legal Officer:  
 Information & Technology

**Jan Gorrie**  
 Ballard Partners –  
 Managing Partner

**Samuel Lewis**  
 Cozen O’Conner –  
 Shareholder

**Dr. David Shapiro**  
 Ambulatory Surgery  
 Company LLC –  
 Administrator of Red Hills  
 Surgical Center

**Andrew Sheeran**  
 Agency for Health Care  
 Administration – General  
 Counsel

**Kimberly Streit**  
 Florida Hospital Association  
 – Senior Vice President

**Kimberly Tendrich**  
 Florida Department of  
 Health – Chief HIPPA  
 Privacy Officer

**Mary Thomas**  
 Florida Medical Association  
 – Assistant General  
 Counsel

**Wences Troncoso**  
 Florida Association of  
 Health Plans – Vice  
 President and General  
 Counsel



# AGENDA

## Legal Work Group Meeting

**Meeting Date:** October 10, 2023

**Time:** 10:30 AM to 12:30 PM

**Location:** 2727 Mahan Dr. Tallahassee, FL 32308

**or**

**Virtually:** <https://events.gcc.teams.microsoft.com/event/3034aac0-9729-4154-90a4-7a1d263fe1e1@583c5f19-3b64-4ced-b59e-e8649bdc4aa6>

**Dial-in Information:** Provided upon registration.

TIME	ITEM
10:30 AM	Welcome
10:35 AM	Roll Call
	Legal Work Group Overview
10:50 AM	Agency Updates
11:10 AM	HIE Background
11:20 AM	Health Information Exchange Vendor Transition
11:30 AM	Policies for Consideration <ul style="list-style-type: none"> <li>• Consent</li> <li>• Data Retention</li> <li>• Security</li> <li>• Infrastructure</li> </ul>
	Meeting Summary
	New Action Items
	Adjournment
12:20 PM	



**Welcome**



# Roll Call



# Legal Work Group Overview

# HIE Legal Work Group Background

- The Office of Health Information Exchange (HIE) governs and oversees the Agency for Health Care Administration's (Agency) HIE initiatives, including the operations of the Florida HIE Services
- The State Consumer Health Information and Policy Advisory Council (SCHIP Advisory Council) provides inputs
- Two subcommittees of the SCHIP Advisory Council provides insights
  - Health Information Exchange Coordinating Committee (HIECC)
  - Health Information Exchange Legal Work Group



# HIE Legal Work Group Background (Contd.)

- The Advisory Council created the HIECC at the direction of the Governor.
- The HIECC responsibilities include developing public policies related to the operations of the Florida HIE Services.
- The HIECC and the Legal Work Group members are appointed by the Agency Secretary and meetings are publicly noticed and convened as needed by the Agency.



# HIE Legal Work Group Duties

- Meets to discuss HIE policies, including provisions of Florida HIE services participation agreements, and provides the Agency with feedback in an advisory capacity.
- Provides legal guidance and assist the Agency by making recommendations regarding Florida's legal policy for implementing a statewide HIE which includes the operation of the Florida HIE services.
- Florida HIE is currently undergoing a new iteration. The group will review and make recommendations regarding HIE agreements that formalize the legal and operational policies of the Florida HIE





# Sunshine Law Compliance

- The Sunshine Law is established by Article I, Section 24 of the Florida State Constitution and Chapter 286, Florida Statutes, increase transparency for collegial bodies.
- A collegial body is subject to the Sunshine Law.
- Any gathering (this includes email communications) of two or more members of the collegial body to discuss some matter on which foreseeable action will be taken by the collegial body is considered a meeting subject to Sunshine Law requirements.
- The Sunshine Law imposes three basic requirements: meetings of the collegial body must be open to the public; the collegial body must give “reasonable notice” of its meetings; the collegial body must keep minutes of its meetings.
- Violations of the Sunshine Law are second degree misdemeanors, which carry a maximum sentence of 60 days and up to a \$500 fine.



# Health Information Exchange (HIE)

- HIE is the secure, electronic transmission of health care related data among medical providers, facilities, patients, and health information organizations.
  - Improves the quality, safety, and cost of patient care.
  - Health information includes encounters, medical history, current medications, lab results, and allergies.
  - Timely electronic sharing of health information can help providers make better decisions about patient care.
- HIE services are provided through a partnership between the Agency, who oversees the operations and governance of the services and Audacious Inquiry (Ai)
  - Ai was procured by PointClickCare in early 2022
- The Agency has a no-cost agreement with the vendor, which enters into agreements with Florida HIE Services participants.



# HIE Services

## Encounter Notification Services (ENS)

- Provides real-time notice of patient health care encounters from health care data sources to subscribing organizations.
- A statewide footprint; one of the largest and most successful alerting services in the country.

## Query-based Exchange

- Allows providers to query for comprehensive clinical records from other organizations.
- Over 6000 Florida providers/organizations are connected or connecting to exchange comprehensive clinical records across National Networks: eHealth Exchange, Carequality, and Commonwell



# HIE Services (Contd.)

## Automated Retrieval of Clinical Health eRecords (ARCHER)

- Provides participants the ability to utilize ENS and the national networks via the State Gateway to automatically retrieve comprehensive clinical records from other providers upon a patient encounter at an ENS data source facility.



# Encounter Notification Statistics – As of the end of August

- We have 802 data senders – with 551 data senders tied to a data subscription.
- We have 245 data recipient agreements.
- There are over 30M lives covered.
- And approx. 9M notifications sent monthly.
- ENS continues to see an increase in the number of participants. However, due to the pending transition, we anticipate a period of latency over the next two quarters.





# Agency Updates



# HIE Background

# Background



2011  
AHCA  
establishes the  
Florida HIE



2017  
AHCA contracts  
with Ai as Florida  
HIE vendor



2020  
ARCHER launched as a  
service of the Florida HIE



2014  
ENS launched  
as a service of  
the Florida HIE



2019  
ENS reaches 10M  
Florida lives



2022  
PointClickCare  
acquires Ai





# Impacts of HIE Vendor Transition to the Florida HIE

- The HIE Infrastructure will need to be modified to support the new tools being offered.
  - Move from state centric to vendor network centric
- Changes to the current ENS agreement would need to be made to support the proposed national solution.
- Changes to the current policy around consent will need to be considered to support the new model.
- The need to change the current pricing model.





# Health Information Exchange Vendor Transition



# Policies for Consideration

- **Consent**
- **Data Retention**
- **Security**
- **Infrastructure**

# Policy Considerations for the Florida HIE

## Infrastructure & Data Retention

The current Florida HIE Encounter Notification Service (ENS) infrastructure does not allow for the retention of data, unless a separate addendum is signed by a participating data source –An addendum to allow for the retention of data and sharing across state lines was approved by the SCHIP Advisory Council in February of this year.

The Addendum was approved as voluntary for data sources, but now that more information is understood about the new vendor's infrastructure there would be a need to move to a new model in order for them to support the Florida HIE system.

The vendor proposed model would allow for additional services that could be beneficial to providers to be supported and would also allow for data to potentially be available from other jurisdictions. The new vendor infrastructure would move the Florida HIE ENS from a Florida Centric model (where data is shared only to and from Florida participants) to the vendors network that would be inclusive of other participants from various states and participating with the vendor in differing capacities (state HIEs, individuals provider organizations, etc.)

- What, if any, are legal considerations the Agency needs to consider if a decision is made to move from the current model, that does not retain data and is Florida centric, to a model that does retain data and would move end points to the vendor's network platform?
- Would legal considerations be different toward retention of data if the model were a Florida centric vs vendor network centric?
- Are there any security considerations the Agency needs to consider for the described infrastructure?
- Are there security considerations the Agency needs to consider with the retention of data in either a Florida centric model or a vendor network centric model?

## Consent Process Modifications

Because data is not maintained, the current Florida HIE model allows ENS data sources to share data (including mental health data) without obtaining consent from the patient. Data recipients must obtain consent to receive patient information, consent must be received prior to data recipient putting a patient on their panel. If data is retained and Florida continued to share mental health data with ENS data sources would need to obtain consent to share the data.

- Would there be legal/policy barriers that the Agency would need to consider in working with providers to change the consent model?
- Are there privacy or security considerations that the Agency would need to consider?

## Supporting Documentation

- Proposed Addendum language to support new infrastructure model
- Current ENS Agreement, inclusive of retention addendum

## Specific Overview of Changes to the Agreement

- Page 1-Added language to reflect the acquisition of Audacious Inquiry by PointClickCare and the ability for ENS subscribers to receive richer, interstate data from PCC’s national platform.
- Page 3-6: General editorial edits to clarify intent.
- Page 9: Deletions to place consent requirement on the data source. Attachment B paragraph 1: Deletion of exclusion of Part 2 data. Attachment B paragraph 2: Deletion of requirement that subscribers obtain consent.
- Page 14: Changes to description of Business Associate. Attachment F, Section 1(e)(i) and addition of 1(e)(ii) describing PCC Network Participants as including business associates of covered entity subscribers.
- Page 17: Addition of PointClickCare Network to the definition of Network in Attachment F, Section 1(t).
- Page 19: Addition of Canada as location for intermittent access to PHI. Added language to Section 2(A)(ii) authorizing certain employees intermittent access to PHI including IT administrators and customer service personnel.
- Page 22: Edits to Permitted Purposes to adjust the consent model. Changes to Section 3(b)(i) and (ii) that place the requirement to collect consent on the sender of data.
- Page 32: Addition of language clarifying disclosure may be made for law enforcement purposes during an emergency using the E-PLUS service.
- Addition of Attachment A1: Network Addendum for Subscribers. This addendum adds language similar to the Data Use Rights Addendum for Data Sources. In addition it includes language around usage of the services and a sample order form for such services.
  - Page 1-Added RECITALS section. The recitals reflect the acquisition of Audacious Inquiry by PointClickCare and the ability for ENS subscribers to receive richer, interstate data from PCC’s national platform.
  - Page 1: Incorporation of Recitals. The recitals are incorporated into the ENS Agreement.
  - Page 1-2: Added definitions used in the Data Use Rights Addendum as well as definitions regarding “Sensitive Information”, “Services”, “User” and “Network Policies”.
  - Page 4: Data Use and Compliance: Participant acknowledges and understands that the Services include certain software applications that enable Participant to access and share information, including Patient Data, electronically with other Network Participants for Authorized Purposes which include treatment, payment operations & public health. Participant is responsible for obtaining patient consent. The Agreement does not permit any sale or marketing of Patient Data.
  - Page 4: Sensitive Information Compliance: Participant shall use and disclose Sensitive Information via the Services only in accordance with the Sensitive Information Policy located at the following hyperlink: <https://collectivemedical.com/wp-content/uploads/2019/04/181101-0730.28-Sensitive-Information-Policy-Florida.pdf>

# 1 Proposed Addendum to Support Transition to the PCC Network:

2 THIS NETWORK ADDENDUM (this “**Addendum**”) to the Florida Health Information Exchange Subscription  
3 Agreement for Encounter Notification Service including all attachments and amendments thereto (the  
4 “**Agreement**”) is between Audacious Inquiry, LLC, on behalf of itself and its Affiliates (“**Vendor**”) and the  
5 undersigned participant on behalf of itself and its Affiliates (“**Participant**”) and is effective as of the date of  
6 Participant’s signature below (the “**Addendum Effective Date**”).

7 **WHEREAS**, PointClickCare Technologies, Inc. (“**PointClickCare**”) acquired Audacious Inquiry, LLC in March of 2022;

8 **WHEREAS**, PointClickCare and its subsidiaries, including Audacious Inquiry, LLC and Collective Medical  
9 Technologies, Inc. (“**Collective**”), facilitate real-time interstate patient care coordination and provides related  
10 services via the PointClickCare Network (defined below);

11 **WHEREAS**, Vendor and Participant desire that Participant benefit by being able to access real-time acute  
12 encounter and associated patient clinical information through participation in the PointClickCare Network;

13 **NOW, THEREFORE**, in consideration of these premises and the other covenants set forth below, the receipt and  
14 sufficiency of which being hereby acknowledged, Vendor and Participant agree that the terms and conditions  
15 below govern use of the Encounter Notification Service and the respective products offered thereunder by  
16 Participant.

17 1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into the Agreement in their entirety  
18 and shall be given full force and effect as if set forth in the body of the Agreement.

19 2. **Certain Definitions.**

20 2.1. “**Affiliate**” means any organization (a) which controls, is controlled by, or is under common ownership or  
21 control with a Party; or (b) for which a Party directly or indirectly holds or controls fifty percent (50%) or  
22 more of the beneficial ownership or voting interest or the power to direct or cause the direction of the  
23 management or policies of an entity, whether through the ability to exercise voting power, by contract,  
24 or otherwise. For the avoidance of doubt, PointClickCare and Collective are Affiliates of Vendor.

25 2.2. “**Authorized Purposes**” are the purposes and activities for which Participant authorizes Vendor, and for  
26 which Participant is authorized, to use and disclose Health Data through the Services, which are  
27 treatment, payment, health care operations, and public health activities, as those terms are used and  
28 defined in 45 C.F.R. §§ 160 and 164, and in all cases only as permitted by applicable state and federal  
29 law. For the avoidance of doubt, “Authorized Purposes” include the Permitted Purposes authorized in  
30 Attachment F.

31 2.3. “**BAA**” means the most recent Business Associate Agreement executed by and between the Parties.

32 2.4. “**PointClickCare Network**” means the interstate network facilitated by PointClickCare pursuant to which  
33 PointClickCare Network Participants share Health Data (e.g. Protected Health Information) for Authorized  
34 Purposes. For the avoidance of about, references to “Network” in the Agreement refers to the  
35 PointClickCare Network.

36  
37 2.5. “**PointClickCare Platform**” means certain PointClickCare remotely hosted software-as-a-service (SaaS)  
38 applications and their underlying technologies that facilitate access to information sourced from  
39 Network Participants on the PointClickCare Network.

40 2.6. “**Network Participant**” means (i) a Partner Network or (ii) any covered entity, business associate, or  
41 other health care entity that participates in the PointClickCare Network by executing an agreement with  
42 Vendor or its Affiliates with terms substantially similar to those set forth in this Addendum. Participant is  
43 a Network Participant.

44 2.7. “**Network Policies**” means the Network Security Policy, the applicable Sensitive Information Policy, the  
45 Terms of Use, the System Requirements, and such other PointClickCare-defined policies and

46 requirements available or referenced at <https://collectivemedical.com/network-policies/>,  
47 pointclickcare.com, or posted in-Service, which govern the technical or administrative operations of the  
48 PointClickCare Network and which may be updated or amended by Vendor in accordance with Section 6  
49 below. The Network Policies are hereby incorporated into the Agreement by this reference. References  
50 within the Network Policies to *Collective* shall be deemed to refer equally to Vendor.

- 51 2.8. “**Partner Network**” means a data solutions provider or electronic data exchange network (such as a  
52 health information exchange or an electronic medical record with interoperability functionality for  
53 sharing Patient Data) with which Vendor or its Affiliates has a relationship which allows sharing of certain  
54 Health Data for Authorized Purposes.
- 55 2.9. “**Service Order Form**” or “**SOF**”, in addition to the definition set forth elsewhere in the Agreement,  
56 means the Service Order Form set forth at Attachment A as well as any other statement of work, service  
57 quote, service order form, data sharing authorization form, or other ordering document executed by  
58 both Participant and Vendor (including, if applicable, with PointClickCare or Collective) which references  
59 the Agreement and which specifies the Services to which Participant is subscribing. A SOF shall be  
60 deemed to be executed by Participant and Vendor if it is signed or electronically accepted by both Parties  
61 or if it is presented electronically by Vendor (including within the Services) and electronically signed or  
62 accepted by Participant.
- 63 2.10. “**Sensitive Information**” is a subset of Health Data which is specifically identified or referred to in the  
64 Sensitive Information Policy and which includes, but is not limited to, Psychotherapy Notes and  
65 Substance Use Disorder Information.
- 66 2.11. “**Services**”, in addition to the definition set forth elsewhere in the Agreement, means the provision of  
67 access to and participation in the PointClickCare Network via one or more SaaS applications on the  
68 PointClickCare Platform, including updates and modifications thereto, and as specified in a SOF, related  
69 support services, configurations, implementations, documentation, and training services.
- 70 2.12. “**User**”, in addition to the definition set forth elsewhere in the Agreement, means any of Participant’s  
71 employees, agents, workforce members, and independent contractors which Participant authorizes to  
72 use the Services in accordance with the Agreement, including the Terms of Use, and with Vendor’s  
73 reasonable security and user-credentialing requirements as Vendor may communicate to Participant  
74 from time to time.
- 75 2.13. Other capitalized terms used but not defined in this Addendum will have the meanings set out in the  
76 Agreement.

### 77 3. **Network Services License.**

- 78 3.1. Subscription. Subject to the terms of the Agreement, as amended, and the applicable SOF, Participant  
79 may subscribe for the use of one or more Services by executing a SOF.
- 80 3.2. Users. Participant shall grant and revoke User authorizations in accordance with Vendor’s reasonable  
81 security and user-credentialing requirements as may be communicated to Participant from time to time.  
82 Participant shall ensure that its Users’ access to and use of the Services is in accordance with the  
83 applicable Terms of Use. Participant is solely responsible for each of its Users’: (a) use of the Services, (b)  
84 training, (c) compliance with the Terms of Use, and (d) compliance with applicable state and federal  
85 privacy laws (including, without limitation, the HIPAA minimum-necessary standard described in 45 C.F.R.  
86 §§ 164.502(b) and 164.514(d) (the “**Minimum-Necessary Standard**”).
- 87 3.3. Certain Restrictions. Participant and its Users may only use the Services in accordance with applicable  
88 law and the Agreement. Except as expressly authorized by the Agreement, Participant will not, and will  
89 not allow any User or other third party under its control to, (a) permit any non-User to access or use the  
90 Services; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets  
91 embodied in the Services; (c) use the Services or any Vendor Confidential Information to develop a  
92 competing product or service or create any derivative works based on the Services; (d) use any Services,  
93 or allow the transfer, transmission, export, or re-export of any Services or portion thereof in violation of  
94 any export control laws or regulations administered by the U.S. Commerce Department or any other

95 government agency; (e) bypass or breach any security device or protection used by the Services or access  
96 or use the Services other than through the use of a User's own then-valid access credentials; (f) input,  
97 upload, transmit, or otherwise provide to or through the Services any information or materials that are  
98 unlawful or injurious or which contain, transmit, or activate any harmful or destructive code; (g) remove  
99 any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in  
100 any part of the Services, including any screen displays, etc., or any other products or materials provided  
101 by Vendor hereunder; or (h) access the Services or allow any employee, contractor or agent to access the  
102 Services, with, for example, any automated or other process such as screen scraping, by using robots,  
103 web-crawlers, spiders or any other sort of bot or tool, for the purpose of extracting data, monitoring  
104 availability, performance, functionality, or for any other benchmarking or competitive purpose. Except to  
105 the extent expressly warranted by Vendor in the Agreement, Vendor will not be liable to Participant or  
106 otherwise responsible for any results obtained or derived by Participant's use of the Services. Participant  
107 further acknowledges and understands that the full availability of certain Services depends, in part, upon  
108 the accuracy and completeness of the Health Data provided by Participant to Vendor via the Services.  
109 Accordingly, Participant acknowledges, understands, and agrees that certain Services, including those  
110 that involve metrics that rely upon the completeness of certain aggregated data, may become  
111 unavailable, in whole or in part, to Participant as a result of Participant's failure or inability to provide  
112 complete and accurate Health Data to Vendor via the Services and that such unavailability of the Services  
113 shall not be deemed to be a failure by Vendor to provide the Services hereunder. Participant agrees that  
114 it shall hold Vendor harmless from any and all adverse expenses, damages or losses which may result,  
115 from any such unavailability of the Services.

116 3.4. Connectivity. As between Audacious and Participant, Participant is solely responsible for all  
117 telecommunication and Internet connections required to access the Services, as well as all hardware and  
118 software at Participant's site(s). In addition to other third-party costs that may apply, Participant agrees  
119 to pay for all telecommunications services required for Participant and its Users to access the Services.  
120 Participant's access to the Services is conditioned upon Participant's compliance with the System  
121 Requirements. Furthermore, Vendor hereby disclaims all liabilities and makes no warranties of any kind  
122 with respect to Participant's use of products or services provided by a third parties to access or use the  
123 Services (e.g., computers, operating systems, internet connections, EMRs (if applicable), etc.).

124 3.5. Services Ownership and Feedback. Except for the limited license rights expressly provided herein, Vendor  
125 retains all rights, title, and interest (including, without limitation, all patent, copyright, trademark, trade  
126 secret, and other intellectual property rights) in and to the Services, and all copies, modifications, and  
127 derivative works thereof (including any changes which incorporate any of Participant's or a User's ideas,  
128 feedback, or suggestions). Participant acknowledges and understands that Participant is obtaining only a  
129 limited license to the Services and that, irrespective of any use of terms such as "purchase" or "sale"  
130 hereunder or in any SOF, no ownership rights are conveyed to Participant under the Agreement.  
131 Participant acknowledges that Vendor makes available to all of its Network Participants on a regular basis  
132 improvements to the Services which may be based in whole or in part on feedback provided by its  
133 Network Participants and their Users and Participant hereby grants, to the extent Participant has the  
134 authority to so grant, to Vendor a worldwide, perpetual, irrevocable, royalty-free license to use and  
135 incorporate into the Services any suggestion, enhancement request, recommendation, correction, or  
136 other feedback which is provided to Vendor by Participant or its Users. Vendor reserves all rights not  
137 expressly granted to Participant under the Agreement.

138  
139 3.6. Participant Ownership of Patient Data. Participant shall retain ownership of its Health Data but acquires  
140 no right, title, or interest, except for the limited license expressly granted to Participant herein, in  
141 Vendor's proprietary format or display of same. Participant hereby grants to Vendor a non-exclusive,  
142 perpetual license to use and disclose the Health Data that Participant transmits via the Services and the  
143 other data described herein, in each case solely for the purposes expressly set forth herein.

#### 144 4. Data Use and Compliance.

145 4.1. Participant Attestation. Participant acknowledges and understands that the Services include certain  
146 software applications that enable Participant and its Users to access and share information, including



147 Patient Data, electronically with other Network Participants for Authorized Purposes. Accordingly, in  
148 order to access the Services and participate in the PointClickCare Network, Participant hereby attests  
149 that Participant is a covered entity (or management company legally authorized on its behalf) as used  
150 and defined at 45 CFR 160.103. Vendor is only willing to provide access to the Services in accordance  
151 with Participant's attestation in this Section. Any misrepresentation of such status by Participant is an  
152 incurable breach of this Agreement.

153 4.2. Business Associate. Vendor is a business associate of Participant, and the Services are provided subject to  
154 the BAA.

155 4.3. Network Security. Vendor and Participant each agree to maintain administrative, physical, and technical  
156 safeguards for protection of the security, confidentiality, and integrity of Health Data as required by the  
157 HIPAA Security Rule set forth at 45 CFR Part 160 and 45 CFR 164 Subparts A and C, and to comply with  
158 the Network Security Policy. Vendor shall store and access Participant's Health Data solely within the  
159 United States and Canada.

160 4.4. Sensitive Information Compliance. Participant and its Users shall use and disclose Sensitive Information  
161 via the Services only in accordance with the Sensitive Information Policy.

162 4.5. Use & Disclosure of Information by Participant and Participant's Contractors.

163 4.5.1. As between Participant and Vendor, Participant is solely responsible for ensuring that, subject to  
164 any separate authorization between Participant and a patient, Participant's use and disclosure of  
165 Health Data via the Services (a) is limited to Authorized Purposes; (b) is permissible under any  
166 applicable notice of privacy practices; (c) is not required to be authorized or consented to by any  
167 person, including any individual to whom it pertains, or if authorization or consent of any person is  
168 required, that it has been obtained, including any consent requirements set forth in the Sensitive  
169 Information Policy; (d) is not subject to an agreed upon or required restriction which would prohibit  
170 the disclosure; and (e) is limited to individuals with whom Participant has a direct or indirect  
171 relationship for treatment, payment, or health care operations purposes, or for whom Participant is  
172 permitted by applicable law to access Health Data for a public health purpose. Furthermore,  
173 Participant hereby represents that its access to, use of, and disclosure of Health Data via the  
174 Services shall be consistent with all applicable federal and state laws, including, without limitation,  
175 the Minimum-Necessary Standard.

176 4.5.2. If Participant engages an individual or entity as a business associate of Participant to provide  
177 services on Participant's behalf which services require access to Health Data via the Services (each a  
178 "Contractor"), Participant shall restrict such Contractor's use and disclosure of Health Data to the  
179 applicable Authorized Purposes and in all cases consistent with the Minimum-Necessary Standard.  
180 To the extent that Participant requests that Vendor directly deliver Participant's Health Data to  
181 Participant's Contractor, via the Services or otherwise, and Vendor agrees to do so, then Participant  
182 shall identify the specific subset of Health Data necessary to fulfill the request and Participant also  
183 hereby represent as follows: (a) that Participant has executed a services contract and a valid HIPAA  
184 business associate agreement with the Contractor; (b) that the Health Data which Participant  
185 instructs Vendor to deliver to the Contractor is consistent with the Authorized Purposes and with  
186 the Minimum-Necessary Standard; (c) that the Contractor has provided Participant with assurances  
187 to Participant's reasonable satisfaction with respect to the Contractor's information-security  
188 practices and related compliance, and that Participant understands and acknowledges that Vendor  
189 will not be performing its own security or compliance assessments of the Contractor; (d) that  
190 Participant will not hold Vendor responsible for the Contractor's use or disclosure of, or changes to,  
191 the Health Data or for any other activity of Participant's Contractor; and (e) that Participant will  
192 immediately notify Vendor upon termination of Participant's services contract or business associate  
193 agreement with the Contractor or upon any change of the scope of such agreements such that a  
194 change to the Contractor's access to Participant's Health Data is merited. Notwithstanding the  
195 foregoing, To the extent requested by Vendor, Participant or its Contractor agrees to provide  
196 reasonable documentation supporting its compliance with this section, including, but not limited to,

197 a copy of the services agreement, business associate agreement and/or documentation of adequate  
198 security controls.

199 4.5.3. *State PDMP Data*. To the extent that a SOF indicates that the Services include data from one or  
200 more states' prescription drug monitoring programs ("**PDMP Data**"), Participant's access to and use  
201 of such PDMP Data may be subject to certain additional "flow down" terms and conditions imposed  
202 by the applicable state PDMP administrators, which additional terms and conditions shall be set  
203 forth in the applicable SOF.

204 4.6. Use and Disclosure of Health Data by Vendor and other Network Participants. Unless separately agreed  
205 to between Participant and a Network Participant, and subject to any other applicable legal or  
206 contractual requirements, obligations, limitations, or conditions, including but not limited to those set  
207 forth in this Agreement, the transfer of Health Data by Participant via the Services, either directly or by  
208 way of a third party, conveys to Vendor and its Affiliates and to the Network Participants full rights to use  
209 and disclose such Health Data for the Authorized Purposes, which Authorized Purposes may, by way of  
210 illustration and not limitation, consist of uses or disclosures of Health Data for population health services,  
211 data aggregation services as defined in 45 C.F.R. § 164.501 and as permitted by 45 C.F.R.  
212 §164.504(e)(2)(i)(B), inclusion in records, disclosure to other parties, modification, de-identification in  
213 accordance with 45 C.F.R. §§ 164.502(d) and 164.514(a)-(c), and destruction, in each case only to the  
214 extent permitted by applicable law. For the avoidance of doubt, this Agreement does not permit any sale  
215 or marketing of Patient Data. The provisions in this subsection 4.6 shall prevail over any conflicting  
216 provisions elsewhere in the Agreement or the BAA. Participant and Vendor further agree that the BAA  
217 shall be deemed to include the provisions set forth in this subsection 4.6.

218 4.7. Use and disclosure of Health Data by Vendor. Vendor and its Affiliates may use and disclose Health Data  
219 (i) for the Authorized Purposes as described in Section 4.6, (ii) for Vendor's proper management and  
220 administration, (iii) for development and improvement of the Services, for de-identification in  
221 accordance with 45 C.F.R. §§ 164.502(d) and 164.514(a)-(c), (iv) to create and share Limited Data Sets in  
222 accordance with 45 CFR § 164.514, and (v) as and as otherwise authorized in this Agreement or the BAA.  
223 Any obligation in the Agreement or the BAA to return or destroy Health Data following termination of  
224 the Agreement or the BAA shall be understood to not apply to any Health Data for which return or  
225 destruction is not feasible. Participant acknowledges that among the possible reasons for which return or  
226 destruction of Health Data may not be feasible are instances where the Health Data has been  
227 transmitted via the PointClickCare Network to another Network Participant for Authorized Purposes as  
228 described herein and where Vendor, therefore, holds such Health Data pursuant to a separate HIPAA  
229 business associate agreement between Vendor and such Network Participant. The provisions in this  
230 subsection 4.7 shall prevail over any conflicting provisions elsewhere in the Agreement or the BAA.  
231 Participant and Vendor further agree that the BAA shall be deemed to include the provisions set forth in  
232 this subsection 4.7.

233 4.8. Use and disclosure of Administrative Data and Transaction Data by Vendor.

234 4.8.1. *Administrative Data*. "**Administrative Data**" means information identifying and pertaining to  
235 Participant and its Users, such as User contact information, but which does not contain Health Data  
236 or Participant's Confidential Information, which Vendor uses to manage and administer the Services  
237 and provide support to Participant and its Users. Vendor may use and disclose Administrative Data  
238 for purposes of providing the Services to Participant and to other Network Participants, for the  
239 purposes set forth in the Terms of Use, for Vendor's proper management and administration, and  
240 as required by law.

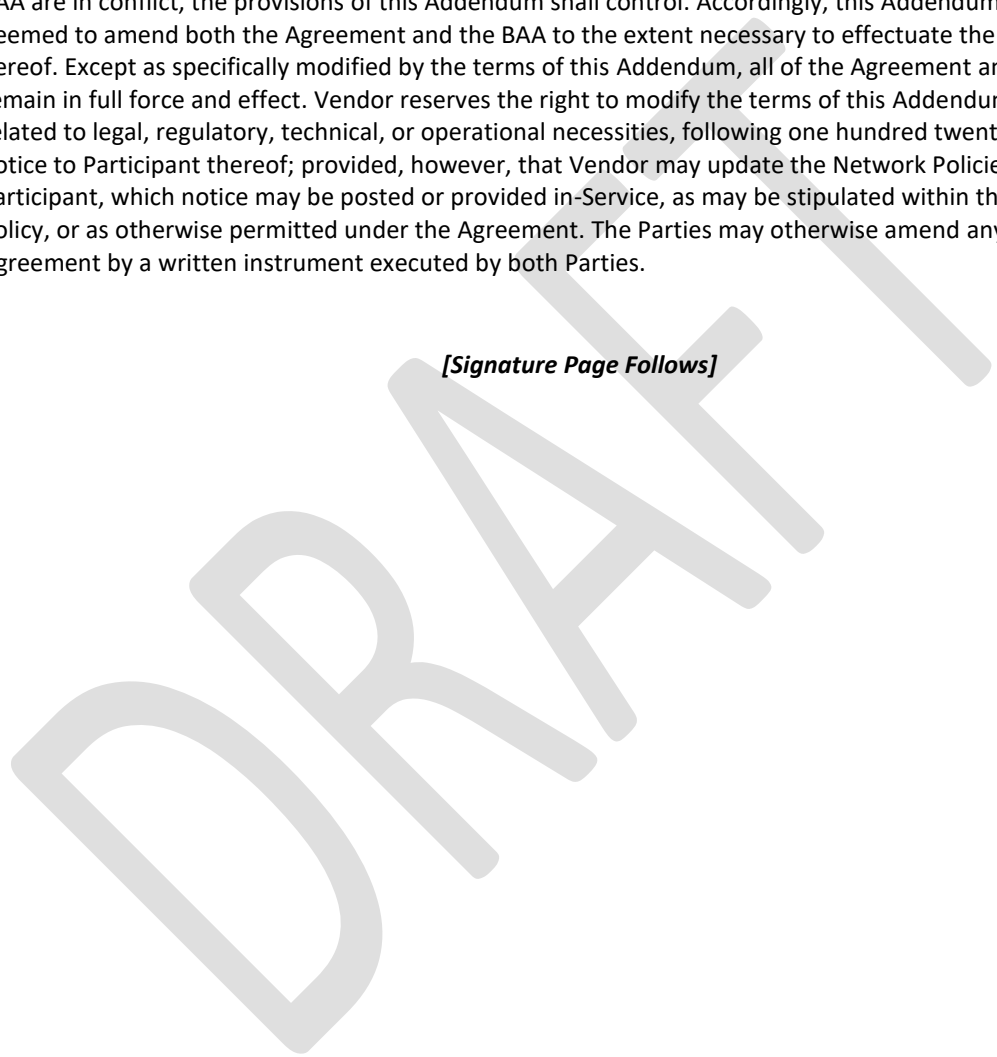
241 4.8.2. *Transaction Data*. "**Transaction Data**" means information and statistics about Participant's  
242 interactions with and usage of the Services, but which does not contain Patient Data, Administrative  
243 Data, or Participant's Confidential Information. Vendor may use and disclose Transaction Data for  
244 any lawful purpose, including, by way of illustration and not limitation, (i) for the analysis,  
245 development, improvement, and provision of the Services and other Vendor products and services;  
246 (ii) for recordkeeping, fee calculation, internal reporting, support, and other internal business

247 purposes; (iii) to report the number and type of transactions and other statistical information  
248 concerning the Services; and (iv) to otherwise administer and facilitate the Services.

249 5. **Insurance.** Participant shall maintain, at no cost to Vendor, insurance coverage (including medical malpractice  
250 coverage) as is usually carried by the type and size of Participant, which shall cover the terms of this  
251 Agreement as amended, with limits commercially reasonable in connection with Participant’s facilities,  
252 Participant’s data, and Participant’s provision of health care services to Participant’s residents, so that such  
253 coverage shall be available in the event of a claim by any of Participant’s Users or resident(s) (or their  
254 representatives or estates) against Vendor.  
255

256 6. **Principles of Construction.** Whenever the provisions of this Addendum and the underlying Agreement or the  
257 BAA are in conflict, the provisions of this Addendum shall control. Accordingly, this Addendum shall be  
258 deemed to amend both the Agreement and the BAA to the extent necessary to effectuate the provisions  
259 hereof. Except as specifically modified by the terms of this Addendum, all of the Agreement and the BAA  
260 remain in full force and effect. Vendor reserves the right to modify the terms of this Addendum for any reason  
261 related to legal, regulatory, technical, or operational necessities, following one hundred twenty (120) days  
262 notice to Participant thereof; provided, however, that Vendor may update the Network Policies upon notice to  
263 Participant, which notice may be posted or provided in-Service, as may be stipulated within the applicable  
264 policy, or as otherwise permitted under the Agreement. The Parties may otherwise amend any part of the  
265 Agreement by a written instrument executed by both Parties.  
266

267 *[Signature Page Follows]*  
268



269 Participant's signatory below represents that they are entering into this Addendum on behalf of Participant and that they have the  
270 authority to bind Participant to this Addendum.

271 **UDACIOUS INQUIRY, LLC.**

**For Participant:** \_\_\_\_\_

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

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

273 Print Name: \_\_\_\_\_

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

274 Print Title \_\_\_\_\_

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

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

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

276 I have authority to bind this company.

I have authority to bind this company

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**EXAMPLE OF SOF**

**ATTACHMENT A**

**ED OPTIMIZATION SERVICE ORDER FORM**

ED Optimization	
Access by a hospital emergency department care providers and care managers to emergency department (ED) visit and inpatient (IP) visit admission, discharge, and transfer encounter data (e.g., patient or member identifier, admit date, location of visit, etc.) and care coordination content contributed by entities participating in the PointClickCare Network.	
<b>User Roles</b>	Account Manager Standard IT Patient Access Read Only
<b>User Access</b>	Direct Access (e.g., username & password) Single Sign-On (if supported)
<b>Data Sources</b>	ADT Feed (HL7 Messages) Historical Encounter File (one-time process during implementation)
<b>Notification Criteria</b>	Notifications trigger upon an encounter at Subscriber’s emergency department based on the following criteria: <ul style="list-style-type: none"> <li>• ED Utilization Criteria (e.g., 5+ ED Visits in 12 Months, 3+ ED Locations in 90 Days)</li> <li>• Care Insights Criteria (e.g., Patients with Active Insights, Patients with Flags, Patients with Active Security &amp; Safety Events)</li> </ul>
<b>Notification Methods</b>	Electronic (e.g., RTF, PDF, ASCII) ED Track Board (if supported by Subscriber/EMR technical teams) Print or Fax (PDF) Email or Text (SMS)
<b>Feature Pages</b>	Patient Overview ED Patient Activity Scheduled Reports Groups Notifications Manage Facility
<b>Additional Features</b>	Patient Demographic Information Tags (ability to designate patient population into groups) Care Team Insights Security & Safety Encounter Information Patient Search Customer Community (Help)
<b>Scheduled Reports</b>	ED Census w/ ED Counts (Monthly Report)

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Advanced Insight Bundles	
<b>Substance Abuse Bundle</b>	History of Opioid Overdose (12 months) History of Substance Use Disorder (12 months) History of Opioid Use Disorder (12 months) History of Alcohol Use Disorder (12 months) PDMP (where available) Substance Exposed Infants

<b>Critical Care Bundle</b>	History of Sepsis Diagnosis (12 months) Advanced Directive (if applicable) MDRO Imaging Type/Date/Location Recent Anticoagulant
<b>Mental Health Bundle</b>	History of Suicidal Ideation or Self-Harm History of Behavioral Health Diagnosis
<b>Social Determinants of Health Bundle</b>	Recent Housing Insecurity Other SDOH (as defined by future development)
<b>Readmission Bundle</b>	ED visit with Inpatient Admission in last 30 days at this facility ED visit with SNF Admission in last 30 days

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Fees & Key Terms	
<b>Quarterly Subscription Fee</b>	<p><b>Estimated Annual ED Visits:</b></p> <p><b>Price Per Annual ED Visit:</b></p> <p><u>ED Optimization:</u> \$1.00 per annual ED visit</p> <p><u>Advanced Insight Bundles:</u> One (1) Advanced Insight Bundle is included with Participant's subscription to ED Optimization at no additional charge to Participant. Each additional Advanced Insight Bundle is \$0.50 per annual ED visit. Check all Advanced Insight Bundles included under this Service Order Form:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Substance Abuse Bundle</li> <li><input type="checkbox"/> Clinical Care Bundle</li> <li><input type="checkbox"/> Mental Health Bundle</li> <li><input type="checkbox"/> Social Determinants of Care Bundle</li> <li><input type="checkbox"/> Readmission Bundle</li> </ul> <p><b>Quarterly Subscription Fee:</b></p> <hr/> <p>Participant will pay the Quarterly Subscription Fee indicated above within thirty (30) days of receipt of an invoice from Vendor.</p> <p>The <b>"Go Live Date"</b> means the first day on which Participant is able to receive notifications via ED Optimization.</p>

285

<b>Implementation Fees, Other Costs</b>	Vendor will not charge implementation fees or impose any costs other than the Quarterly Subscription Fee unless separately set forth in an addendum hereto (e.g., to access PDMP data); provided, however, that Participant will be responsible for (i) any fees imposed by third parties in connection with Participant's implementation of, or access to, the Services.
<b>Term</b>	The initial term of this SOF is one (1) year commencing on the Addendum Effective Date, after which this SOF will automatically renew for successive one (1) year renewal terms except to the extent that (i) either Party provides written notice of non-renewal of this SOF to the other Party not less than ninety (90) days prior to its renewal or (ii) this SOF or the underlying Agreement is terminated in accordance with the terms of the Agreement.

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*[End of Attachment A]*

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**Florida Health Information Exchange  
Subscription Agreement for Encounter Notification Service**

3 This Subscription Agreement is a multi-party agreement by and between the undersigned vendor,  
4 Audacious Inquiry, LLC (“Vendor”), under contract with the Agency for Health Care  
5 Administration (“AHCA”) for statewide health information exchange services and the other  
6 undersigned party (hereinafter referred to individually as “Participant”) acting as a data source or  
7 recipient of data and other Participants who have executed the same Subscription Agreement to  
8 subscribe to this Encounter Notification Service. The Florida Health Information Exchange  
9 General Participation Terms and Conditions attached hereto are hereby incorporated by reference  
10 (hereinafter “General Terms and Conditions”). This Subscription Agreement, any exhibits,  
11 attachments, or amendments thereto, and the incorporated General Terms and Conditions, are  
12 hereinafter referred to as either “Subscription Agreement” or “Agreement.”  
13

14 WITNESSETH:

15  
16 WHEREAS, AHCA has engaged Vendor to provide administration, management,  
17 oversight, and support of statewide health information exchange services through the Florida  
18 Health Information Exchange (Florida HIE);  
19

20 WHEREAS, AHCA will provide governance, guidance, and approval of said  
21 administration, management, oversight, and support, including defining Permitted Purposes,  
22 Participants, fees, and general Florida HIE policies and procedures; and  
23

24 WHEREAS, the purpose of the Encounter Notification Service is to support coordination  
25 of care activities;  
26

27 WHEREAS, Participant desires to subscribe to and utilize the Encounter Notification  
28 Service offered by Vendor, and Vendor agrees to provide such service;  
29

30 NOW THEREFORE, for and in consideration of the mutual covenants contained below  
31 and for other good and valuable consideration, the receipt and adequacy of which are hereby  
32 acknowledged, the parties hereto mutually agree to the following additional terms:  
33

- 34 1. **Definitions:** All definitions in the General Terms and Conditions, listed in *Attachment F*  
35 hereto, apply to this Subscription Agreement for Encounter Notification Service, and the  
36 following additional definitions apply to this Subscription Agreement for Encounter  
37 Notification Service:  
38  
39 a. **Encounter Notification Service (ENS)** shall mean the service provided by Vendor on  
40 the Network wherein the Participant may receive information and/or Health Data on an  
41 Individual from other Participants acting as a data source through the Network.  
42  
43 b. **Alert Message** shall mean the specific Health Data delivered by the ENS.



- c. **Encounter Data** shall mean specific Health Data made available by Participants for matching with Individuals in the Panel to enable creation of the Alert Message.
- d. **Panel** shall mean a listing of patients or members with identifying information to be used in matching to the Encounter Data received from Participants.

2. **Permitted Purposes for this Encounter Notification Service:** Participant may use Health Data received by it from other Participants only for the following purposes (and the other Permitted Purposes in the General Terms and Conditions):

- a. **Treatment.** Treatment of the Individual who is the subject of the Protected Health Information (PHI) received by the Participant or Participant User.
- b. **Health Care Operations.** Health Care Operations as defined in 45 Code of Federal Regulations (CFR) 164.501 and provided that the Participant or Participant User is receiving the PHI for their own use. Participant shall only use the Minimum Necessary PHI for such Health Care Operations purposes.
- c. **Public Health.** Public Health activities and reporting to the extent permitted by Applicable Law.
- d. **Payment.** Payment as defined in 45 CFR 164.501 and permitted by Applicable Law.
- e. **Other.** Any release or use of Health Data permitted by Applicable Law and consistent with any limitations set forth in the General Terms and Conditions.

3. **Responsibilities of Participants:**

- a. **Compliance with General Terms and Conditions.** Participant agrees to comply with the General Terms and Conditions. Failure to comply with the General Terms and Conditions shall be grounds for suspension or termination of this Subscription Agreement.
- b. **Network Operating Policies and Technical Requirements for ENS.** All Participants agree and are required to meet and comply with the Network Operating Policies and Technical Requirements for this Encounter Notification Service Agreement listed in *Attachment B* hereto.

4. **Vendor Responsibilities:**

- a. Vendor will provide the ENS by performing a matching of data received from Participants acting as a data source and delivery of the Alert Messages to the appropriate recipient. A copy of the Alert Messages may be provided to the Participant that provided the Encounter Data upon request. The messages will be delivered using Secure File Transfer Protocol (SFTP), Direct Messaging Service, or another means of secure delivery as mutually agreed by the parties to this Agreement.

- 90
- 91 b. Vendor will provide the Service Levels for availability of ENS help desk response times
- 92 as set forth in *Attachment E*.
- 93
- 94 c. Unless required by law, Vendor will not disclose to any third party audit trail data which
- 95 will collectively and individually be considered a trade secret in accordance with Section
- 96 812.081, Florida Statutes. Vendor will retain the audit trail data of transactions for a
- 97 terminated Participant for eight (8) years.
- 98
- 99 d. Vendor will maintain the confidentiality of the Panels received from Participants, and
- 100 will not use the Panel for any purpose not expressly permitted by the Participant.
- 101
- 102 e. Vendor will maintain the confidentiality of the Encounter Data received from Participants
- 103 acting as a data source, destroying the data immediately after use by Vendor.
- 104
- 105 f. Vendor's role is to facilitate the exchange of Health Data through the operation of the
- 106 Network, in accordance with this Subscription Agreement. Vendor has no role in
- 107 verifying the accuracy of Health Data received from Participants or verifying whether a
- 108 Participant, Participant User, or other individuals designated by Participant to receive
- 109 Alert Messages are authorized to send, receive, use or disclose particular information
- 110 and/or Health Data. Vendor will not collect information from the content of Alert
- 111 Messages.
- 112
- 113 5. **Fees:** Participant recipients of Alert Messages are charged an annual fee by Vendor which
- 114 may be billed quarterly as determined by Vendor. The fee may be changed upon ninety (90)
- 115 days written notice to Participants except for a fee reduction which can go into effect
- 116 immediately. The fee schedule is displayed as *Attachment D*.
- 117
- 118 6. **Term and Termination:** This Agreement will continue until and unless Vendor or
- 119 Participant terminates this Agreement. Such termination may be effected as provided for in
- 120 the General Terms and Conditions, or additionally, Vendor may terminate this Agreement
- 121 without cause by providing the Participant with at least thirty (30) days prior written notice.
- 122
- 123 7. **Miscellaneous:** If a provision of this Subscription Agreement conflicts with a provision in
- 124 the General Terms and Conditions, the provision of this Subscription Agreement controls.
- 125 Notices under this Agreement shall be given to the parties' respective email or physical
- 126 address listed in *Attachment C* to this Subscription Agreement.
- 127
- 128 8. **Effective Date of this Subscription Agreement:** This Subscription Agreement and the
- 129 General Terms and Conditions become effective when fully executed. This Agreement
- 130 supersedes any former agreement for the Event Notification Service.

March 2023

9. **Attachments.** The following Attachments are incorporated into this Agreement:

*Attachment A:* Addendum to the ENS Agreement

*Attachment B:* Network Operating Policies and Technical Requirements for the  
Encounter Notification Service

*Attachment C:* Addresses for Notice

*Attachment D:* Encounter Notification Service Fee Schedule

*Attachment E:* Service Level Agreement

*Attachment F:* Florida Health Information Exchange General Participation Terms &  
Conditions

*Attachment G:* Addendum to ENS Agreement for Patient Asserted Notifications

IN WITNESS WHEREOF, this Subscription Agreement has been entered into and executed by  
officials duly authorized to bind their respective parties.

Vendor

**Audacious Inquiry, LLC**

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

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

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

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

Participant acting as Data Source

**Entity Name:** \_\_\_\_\_

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

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

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

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

Participant acting as Recipient of Data

**Entity Name:** \_\_\_\_\_

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

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

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

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

**Attachment A: Addendum to the ENS Agreement**

THIS ADDENDUM (this “**Addendum**”) to the Florida Health Information Exchange Subscription Agreement for Encounter Notification Service in effect between Audacious Inquiry, LLC (“**Vendor**”), and the Participant (the “**Agreement**”) is effective upon execution by Participant pursuant to Section 21(d) of the Agreement (the “**Effective Date**”). Capitalized terms used but not defined in this Addendum will have the meaning set forth in the Agreement.

**RECITALS**

WHEREAS, Vendor was acquired by PointClickCare Technologies, Inc. (“**PointClickCare**”) on or about March 16, 2022.

WHEREAS, PointClickCare and its subsidiaries including Collective Medical Technologies, Inc., and Audacious Inquiry, LLC, (together, sometimes referred to as “**Affiliates**”), facilitate real-time patient care coordination and provide related services via the PointClickCare Network (defined below);

WHEREAS, Vendor and Participant desire that the patients of Participant benefit from the availability of such patients’ Health Data across the PointClickCare Network for Permitted Purposes (defined below);

WHEREAS, in order to facilitate the availability of Health Data across the PointClickCare Network, Participant and Vendor each desire to amend the Agreement as set forth herein;

NOW, THEREFORE, in consideration of these premises and the other covenants set forth below, the receipt and sufficiency of which being hereby acknowledged, Vendor and Participant agree that the Agreement is amended as follows:

**ADDENDUM**

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Addendum in their entirety and shall be given full force and effect as if set forth in the body of this Addendum.
2. **Additional Definitions.** Section 1 of the Agreement shall be amended to include the following definitions:
  - e. “**Affiliate**” means any organization (a) which controls, is controlled by, or is under common ownership or control with a Party; or (b) for which a Party directly or indirectly holds or controls fifty percent (50%) or more of the beneficial ownership or voting interest or the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract, or otherwise. For the avoidance of doubt, PointClickCare and Collective Medical Technologies, Inc. are Affiliates of Audacious Inquiry, LLC.
  - f. “**PointClickCare Network**” means the network facilitated by PointClickCare pursuant to which PointClickCare Network Participants share Protected Health Information for Permitted Purposes.
  - g. “**PointClickCare Network Participant**” means a covered entity, business associate, or other health care entity that participates in the PointClickCare Network by

# Policy Considerations for the Florida HIE

## Infrastructure & Data Retention

The current Florida HIE Encounter Notification Service (ENS) infrastructure does not allow for the retention of data, unless a separate addendum is signed by a participating data source –An addendum to allow for the retention of data and sharing across state lines was approved by the SCHIP Advisory Council in February of this year.

The Addendum was approved as voluntary for data sources, but now that more information is understood about the new vendor's infrastructure there would be a need to move to a new model in order for them to support the Florida HIE system.

The vendor proposed model would allow for additional services that could be beneficial to providers to be supported and would also allow for data to potentially be available from other jurisdictions. The new vendor infrastructure would move the Florida HIE ENS from a Florida Centric model (where data is shared only to and from Florida participants) to the vendors network that would be inclusive of other participants from various states and participating with the vendor in differing capacities (state HIEs, individuals provider organizations, etc.)

- What, if any, are legal considerations the Agency needs to consider if a decision is made to move from the current model, that does not retain data and is Florida centric, to a model that does retain data and would move end points to the vendor's network platform?
- Would legal considerations be different toward retention of data if the model were a Florida centric vs vendor network centric?
- Are there any security considerations the Agency needs to consider for the described infrastructure?
- Are there security considerations the Agency needs to consider with the retention of data in either a Florida centric model or a vendor network centric model?

## Consent Process Modifications

Because data is not maintained, the current Florida HIE model allows ENS data sources to share data (including mental health data) without obtaining consent from the patient. Data recipients must obtain consent to receive patient information, consent must be received prior to data recipient putting a patient on their panel. If data is retained and Florida continued to share mental health data with ENS data sources would need to obtain consent to share the data.

- Would there be legal/policy barriers that the Agency would need to consider in working with providers to change the consent model?
- Are there privacy or security considerations that the Agency would need to consider?

## Supporting Documentation

- Proposed Addendum language to support new infrastructure model
- Current ENS Agreement, inclusive of retention addendum

# 1 Proposed Addendum to Support Transition to the PCC Network:

2 THIS NETWORK ADDENDUM (this “**Addendum**”) to the Florida Health Information Exchange Subscription  
3 Agreement for Encounter Notification Service including all attachments and amendments thereto (the  
4 “**Agreement**”) is between Audacious Inquiry, LLC, on behalf of itself and its Affiliates (“**Vendor**”) and the  
5 undersigned participant on behalf of itself and its Affiliates (“**Participant**”) and is effective as of the date of  
6 Participant’s signature below (the “**Addendum Effective Date**”).

7 **WHEREAS**, PointClickCare Technologies, Inc. (“**PointClickCare**”) acquired Audacious Inquiry, LLC in March of 2022;

8 **WHEREAS**, PointClickCare and its subsidiaries, including Audacious Inquiry, LLC and Collective Medical  
9 Technologies, Inc. (“**Collective**”), facilitate real-time interstate patient care coordination and provides related  
10 services via the PointClickCare Network (defined below);

11 **WHEREAS**, Vendor and Participant desire that Participant benefit by being able to access real-time acute  
12 encounter and associated patient clinical information through participation in the PointClickCare Network;

13 **NOW, THEREFORE**, in consideration of these premises and the other covenants set forth below, the receipt and  
14 sufficiency of which being hereby acknowledged, Vendor and Participant agree that the terms and conditions  
15 below govern use of the Encounter Notification Service and the respective products offered thereunder by  
16 Participant.

17 1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into the Agreement in their entirety  
18 and shall be given full force and effect as if set forth in the body of the Agreement.

19 2. **Certain Definitions.**

20 2.1. “**Affiliate**” means any organization (a) which controls, is controlled by, or is under common ownership or  
21 control with a Party; or (b) for which a Party directly or indirectly holds or controls fifty percent (50%) or  
22 more of the beneficial ownership or voting interest or the power to direct or cause the direction of the  
23 management or policies of an entity, whether through the ability to exercise voting power, by contract,  
24 or otherwise. For the avoidance of doubt, PointClickCare and Collective are Affiliates of Vendor.

25 2.2. “**Authorized Purposes**” are the purposes and activities for which Participant authorizes Vendor, and for  
26 which Participant is authorized, to use and disclose Health Data through the Services, which are  
27 treatment, payment, health care operations, and public health activities, as those terms are used and  
28 defined in 45 C.F.R. §§ 160 and 164, and in all cases only as permitted by applicable state and federal  
29 law. For the avoidance of doubt, “Authorized Purposes” include the Permitted Purposes authorized in  
30 Attachment F.

31 2.3. “**BAA**” means the most recent Business Associate Agreement executed by and between the Parties.

32 2.4. “**PointClickCare Network**” means the interstate network facilitated by PointClickCare pursuant to which  
33 PointClickCare Network Participants share Health Data (e.g. Protected Health Information) for Authorized  
34 Purposes. For the avoidance of about, references to “Network” in the Agreement refers to the  
35 PointClickCare Network.  
36

37 2.5. “**PointClickCare Platform**” means certain PointClickCare remotely hosted software-as-a-service (SaaS)  
38 applications and their underlying technologies that facilitate access to information sourced from  
39 Network Participants on the PointClickCare Network.

40 2.6. “**Network Participant**” means (i) a Partner Network or (ii) any covered entity, business associate, or  
41 other health care entity that participates in the PointClickCare Network by executing an agreement with  
42 Vendor or its Affiliates with terms substantially similar to those set forth in this Addendum. Participant is  
43 a Network Participant.

44 2.7. “**Network Policies**” means the Network Security Policy, the applicable Sensitive Information Policy, the  
45 Terms of Use, the System Requirements, and such other PointClickCare-defined policies and

46 requirements available or referenced at <https://collectivemedical.com/network-policies/>,  
47 pointclickcare.com, or posted in-Service, which govern the technical or administrative operations of the  
48 PointClickCare Network and which may be updated or amended by Vendor in accordance with Section 6  
49 below. The Network Policies are hereby incorporated into the Agreement by this reference. References  
50 within the Network Policies to *Collective* shall be deemed to refer equally to Vendor.

- 51 2.8. “**Partner Network**” means a data solutions provider or electronic data exchange network (such as a  
52 health information exchange or an electronic medical record with interoperability functionality for  
53 sharing Patient Data) with which Vendor or its Affiliates has a relationship which allows sharing of certain  
54 Health Data for Authorized Purposes.
- 55 2.9. “**Service Order Form**” or “**SOF**”, in addition to the definition set forth elsewhere in the Agreement,  
56 means the Service Order Form set forth at Attachment A as well as any other statement of work, service  
57 quote, service order form, data sharing authorization form, or other ordering document executed by  
58 both Participant and Vendor (including, if applicable, with PointClickCare or Collective) which references  
59 the Agreement and which specifies the Services to which Participant is subscribing. A SOF shall be  
60 deemed to be executed by Participant and Vendor if it is signed or electronically accepted by both Parties  
61 or if it is presented electronically by Vendor (including within the Services) and electronically signed or  
62 accepted by Participant.
- 63 2.10. “**Sensitive Information**” is a subset of Health Data which is specifically identified or referred to in the  
64 Sensitive Information Policy and which includes, but is not limited to, Psychotherapy Notes and  
65 Substance Use Disorder Information.
- 66 2.11. “**Services**”, in addition to the definition set forth elsewhere in the Agreement, means the provision of  
67 access to and participation in the PointClickCare Network via one or more SaaS applications on the  
68 PointClickCare Platform, including updates and modifications thereto, and as specified in a SOF, related  
69 support services, configurations, implementations, documentation, and training services.
- 70 2.12. “**User**”, in addition to the definition set forth elsewhere in the Agreement, means any of Participant’s  
71 employees, agents, workforce members, and independent contractors which Participant authorizes to  
72 use the Services in accordance with the Agreement, including the Terms of Use, and with Vendor’s  
73 reasonable security and user-credentialing requirements as Vendor may communicate to Participant  
74 from time to time.
- 75 2.13. Other capitalized terms used but not defined in this Addendum will have the meanings set out in the  
76 Agreement.

### 77 3. **Network Services License.**

- 78 3.1. Subscription. Subject to the terms of the Agreement, as amended, and the applicable SOF, Participant  
79 may subscribe for the use of one or more Services by executing a SOF.
- 80 3.2. Users. Participant shall grant and revoke User authorizations in accordance with Vendor’s reasonable  
81 security and user-credentialing requirements as may be communicated to Participant from time to time.  
82 Participant shall ensure that its Users’ access to and use of the Services is in accordance with the  
83 applicable Terms of Use. Participant is solely responsible for each of its Users’: (a) use of the Services, (b)  
84 training, (c) compliance with the Terms of Use, and (d) compliance with applicable state and federal  
85 privacy laws (including, without limitation, the HIPAA minimum-necessary standard described in 45 C.F.R.  
86 §§ 164.502(b) and 164.514(d) (the “**Minimum-Necessary Standard**”).
- 87 3.3. Certain Restrictions. Participant and its Users may only use the Services in accordance with applicable  
88 law and the Agreement. Except as expressly authorized by the Agreement, Participant will not, and will  
89 not allow any User or other third party under its control to, (a) permit any non-User to access or use the  
90 Services; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets  
91 embodied in the Services; (c) use the Services or any Vendor Confidential Information to develop a  
92 competing product or service or create any derivative works based on the Services; (d) use any Services,  
93 or allow the transfer, transmission, export, or re-export of any Services or portion thereof in violation of  
94 any export control laws or regulations administered by the U.S. Commerce Department or any other

95 government agency; (e) bypass or breach any security device or protection used by the Services or access  
96 or use the Services other than through the use of a User's own then-valid access credentials; (f) input,  
97 upload, transmit, or otherwise provide to or through the Services any information or materials that are  
98 unlawful or injurious or which contain, transmit, or activate any harmful or destructive code; (g) remove  
99 any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in  
100 any part of the Services, including any screen displays, etc., or any other products or materials provided  
101 by Vendor hereunder; or (h) access the Services or allow any employee, contractor or agent to access the  
102 Services, with, for example, any automated or other process such as screen scraping, by using robots,  
103 web-crawlers, spiders or any other sort of bot or tool, for the purpose of extracting data, monitoring  
104 availability, performance, functionality, or for any other benchmarking or competitive purpose. Except to  
105 the extent expressly warranted by Vendor in the Agreement, Vendor will not be liable to Participant or  
106 otherwise responsible for any results obtained or derived by Participant's use of the Services. Participant  
107 further acknowledges and understands that the full availability of certain Services depends, in part, upon  
108 the accuracy and completeness of the Health Data provided by Participant to Vendor via the Services.  
109 Accordingly, Participant acknowledges, understands, and agrees that certain Services, including those  
110 that involve metrics that rely upon the completeness of certain aggregated data, may become  
111 unavailable, in whole or in part, to Participant as a result of Participant's failure or inability to provide  
112 complete and accurate Health Data to Vendor via the Services and that such unavailability of the Services  
113 shall not be deemed to be a failure by Vendor to provide the Services hereunder. Participant agrees that  
114 it shall hold Vendor harmless from any and all adverse expenses, damages or losses which may result,  
115 from any such unavailability of the Services.

116 3.4. Connectivity. As between Audacious and Participant, Participant is solely responsible for all  
117 telecommunication and Internet connections required to access the Services, as well as all hardware and  
118 software at Participant's site(s). In addition to other third-party costs that may apply, Participant agrees  
119 to pay for all telecommunications services required for Participant and its Users to access the Services.  
120 Participant's access to the Services is conditioned upon Participant's compliance with the System  
121 Requirements. Furthermore, Vendor hereby disclaims all liabilities and makes no warranties of any kind  
122 with respect to Participant's use of products or services provided by a third parties to access or use the  
123 Services (e.g., computers, operating systems, internet connections, EMRs (if applicable), etc.).

124 3.5. Services Ownership and Feedback. Except for the limited license rights expressly provided herein, Vendor  
125 retains all rights, title, and interest (including, without limitation, all patent, copyright, trademark, trade  
126 secret, and other intellectual property rights) in and to the Services, and all copies, modifications, and  
127 derivative works thereof (including any changes which incorporate any of Participant's or a User's ideas,  
128 feedback, or suggestions). Participant acknowledges and understands that Participant is obtaining only a  
129 limited license to the Services and that, irrespective of any use of terms such as "purchase" or "sale"  
130 hereunder or in any SOF, no ownership rights are conveyed to Participant under the Agreement.  
131 Participant acknowledges that Vendor makes available to all of its Network Participants on a regular basis  
132 improvements to the Services which may be based in whole or in part on feedback provided by its  
133 Network Participants and their Users and Participant hereby grants, to the extent Participant has the  
134 authority to so grant, to Vendor a worldwide, perpetual, irrevocable, royalty-free license to use and  
135 incorporate into the Services any suggestion, enhancement request, recommendation, correction, or  
136 other feedback which is provided to Vendor by Participant or its Users. Vendor reserves all rights not  
137 expressly granted to Participant under the Agreement.

138  
139 3.6. Participant Ownership of Patient Data. Participant shall retain ownership of its Health Data but acquires  
140 no right, title, or interest, except for the limited license expressly granted to Participant herein, in  
141 Vendor's proprietary format or display of same. Participant hereby grants to Vendor a non-exclusive,  
142 perpetual license to use and disclose the Health Data that Participant transmits via the Services and the  
143 other data described herein, in each case solely for the purposes expressly set forth herein.

#### 144 4. Data Use and Compliance.

145 4.1. Participant Attestation. Participant acknowledges and understands that the Services include certain  
146 software applications that enable Participant and its Users to access and share information, including



147 Patient Data, electronically with other Network Participants for Authorized Purposes. Accordingly, in  
148 order to access the Services and participate in the PointClickCare Network, Participant hereby attests  
149 that Participant is a covered entity (or management company legally authorized on its behalf) as used  
150 and defined at 45 CFR 160.103. Vendor is only willing to provide access to the Services in accordance  
151 with Participant's attestation in this Section. Any misrepresentation of such status by Participant is an  
152 incurable breach of this Agreement.

153 4.2. Business Associate. Vendor is a business associate of Participant, and the Services are provided subject to  
154 the BAA.

155 4.3. Network Security. Vendor and Participant each agree to maintain administrative, physical, and technical  
156 safeguards for protection of the security, confidentiality, and integrity of Health Data as required by the  
157 HIPAA Security Rule set forth at 45 CFR Part 160 and 45 CFR 164 Subparts A and C, and to comply with  
158 the Network Security Policy. Vendor shall store and access Participant's Health Data solely within the  
159 United States and Canada.

160 4.4. Sensitive Information Compliance. Participant and its Users shall use and disclose Sensitive Information  
161 via the Services only in accordance with the Sensitive Information Policy.

162 4.5. Use & Disclosure of Information by Participant and Participant's Contractors.

163 4.5.1. As between Participant and Vendor, Participant is solely responsible for ensuring that, subject to  
164 any separate authorization between Participant and a patient, Participant's use and disclosure of  
165 Health Data via the Services (a) is limited to Authorized Purposes; (b) is permissible under any  
166 applicable notice of privacy practices; (c) is not required to be authorized or consented to by any  
167 person, including any individual to whom it pertains, or if authorization or consent of any person is  
168 required, that it has been obtained, including any consent requirements set forth in the Sensitive  
169 Information Policy; (d) is not subject to an agreed upon or required restriction which would prohibit  
170 the disclosure; and (e) is limited to individuals with whom Participant has a direct or indirect  
171 relationship for treatment, payment, or health care operations purposes, or for whom Participant is  
172 permitted by applicable law to access Health Data for a public health purpose. Furthermore,  
173 Participant hereby represents that its access to, use of, and disclosure of Health Data via the  
174 Services shall be consistent with all applicable federal and state laws, including, without limitation,  
175 the Minimum-Necessary Standard.

176 4.5.2. If Participant engages an individual or entity as a business associate of Participant to provide  
177 services on Participant's behalf which services require access to Health Data via the Services (each a  
178 "Contractor"), Participant shall restrict such Contractor's use and disclosure of Health Data to the  
179 applicable Authorized Purposes and in all cases consistent with the Minimum-Necessary Standard.  
180 To the extent that Participant requests that Vendor directly deliver Participant's Health Data to  
181 Participant's Contractor, via the Services or otherwise, and Vendor agrees to do so, then Participant  
182 shall identify the specific subset of Health Data necessary to fulfill the request and Participant also  
183 hereby represent as follows: (a) that Participant has executed a services contract and a valid HIPAA  
184 business associate agreement with the Contractor; (b) that the Health Data which Participant  
185 instructs Vendor to deliver to the Contractor is consistent with the Authorized Purposes and with  
186 the Minimum-Necessary Standard; (c) that the Contractor has provided Participant with assurances  
187 to Participant's reasonable satisfaction with respect to the Contractor's information-security  
188 practices and related compliance, and that Participant understands and acknowledges that Vendor  
189 will not be performing its own security or compliance assessments of the Contractor; (d) that  
190 Participant will not hold Vendor responsible for the Contractor's use or disclosure of, or changes to,  
191 the Health Data or for any other activity of Participant's Contractor; and (e) that Participant will  
192 immediately notify Vendor upon termination of Participant's services contract or business associate  
193 agreement with the Contractor or upon any change of the scope of such agreements such that a  
194 change to the Contractor's access to Participant's Health Data is merited. Notwithstanding the  
195 foregoing, To the extent requested by Vendor, Participant or its Contractor agrees to provide  
196 reasonable documentation supporting its compliance with this section, including, but not limited to,

197 a copy of the services agreement, business associate agreement and/or documentation of adequate  
198 security controls.

199 4.5.3. *State PDMP Data*. To the extent that a SOF indicates that the Services include data from one or  
200 more states' prescription drug monitoring programs ("**PDMP Data**"), Participant's access to and use  
201 of such PDMP Data may be subject to certain additional "flow down" terms and conditions imposed  
202 by the applicable state PDMP administrators, which additional terms and conditions shall be set  
203 forth in the applicable SOF.

204 4.6. Use and Disclosure of Health Data by Vendor and other Network Participants. Unless separately agreed  
205 to between Participant and a Network Participant, and subject to any other applicable legal or  
206 contractual requirements, obligations, limitations, or conditions, including but not limited to those set  
207 forth in this Agreement, the transfer of Health Data by Participant via the Services, either directly or by  
208 way of a third party, conveys to Vendor and its Affiliates and to the Network Participants full rights to use  
209 and disclose such Health Data for the Authorized Purposes, which Authorized Purposes may, by way of  
210 illustration and not limitation, consist of uses or disclosures of Health Data for population health services,  
211 data aggregation services as defined in 45 C.F.R. § 164.501 and as permitted by 45 C.F.R.  
212 §164.504(e)(2)(i)(B), inclusion in records, disclosure to other parties, modification, de-identification in  
213 accordance with 45 C.F.R. §§ 164.502(d) and 164.514(a)-(c), and destruction, in each case only to the  
214 extent permitted by applicable law. For the avoidance of doubt, this Agreement does not permit any sale  
215 or marketing of Patient Data. The provisions in this subsection 4.6 shall prevail over any conflicting  
216 provisions elsewhere in the Agreement or the BAA. Participant and Vendor further agree that the BAA  
217 shall be deemed to include the provisions set forth in this subsection 4.6.

218 4.7. Use and disclosure of Health Data by Vendor. Vendor and its Affiliates may use and disclose Health Data  
219 (i) for the Authorized Purposes as described in Section 4.6, (ii) for Vendor's proper management and  
220 administration, (iii) for development and improvement of the Services, for de-identification in  
221 accordance with 45 C.F.R. §§ 164.502(d) and 164.514(a)-(c), (iv) to create and share Limited Data Sets in  
222 accordance with 45 CFR § 164.514, and (v) as and as otherwise authorized in this Agreement or the BAA.  
223 Any obligation in the Agreement or the BAA to return or destroy Health Data following termination of  
224 the Agreement or the BAA shall be understood to not apply to any Health Data for which return or  
225 destruction is not feasible. Participant acknowledges that among the possible reasons for which return or  
226 destruction of Health Data may not be feasible are instances where the Health Data has been  
227 transmitted via the PointClickCare Network to another Network Participant for Authorized Purposes as  
228 described herein and where Vendor, therefore, holds such Health Data pursuant to a separate HIPAA  
229 business associate agreement between Vendor and such Network Participant. The provisions in this  
230 subsection 4.7 shall prevail over any conflicting provisions elsewhere in the Agreement or the BAA.  
231 Participant and Vendor further agree that the BAA shall be deemed to include the provisions set forth in  
232 this subsection 4.7.

233 4.8. Use and disclosure of Administrative Data and Transaction Data by Vendor.

234 4.8.1. *Administrative Data*. "**Administrative Data**" means information identifying and pertaining to  
235 Participant and its Users, such as User contact information, but which does not contain Health Data  
236 or Participant's Confidential Information, which Vendor uses to manage and administer the Services  
237 and provide support to Participant and its Users. Vendor may use and disclose Administrative Data  
238 for purposes of providing the Services to Participant and to other Network Participants, for the  
239 purposes set forth in the Terms of Use, for Vendor's proper management and administration, and  
240 as required by law.

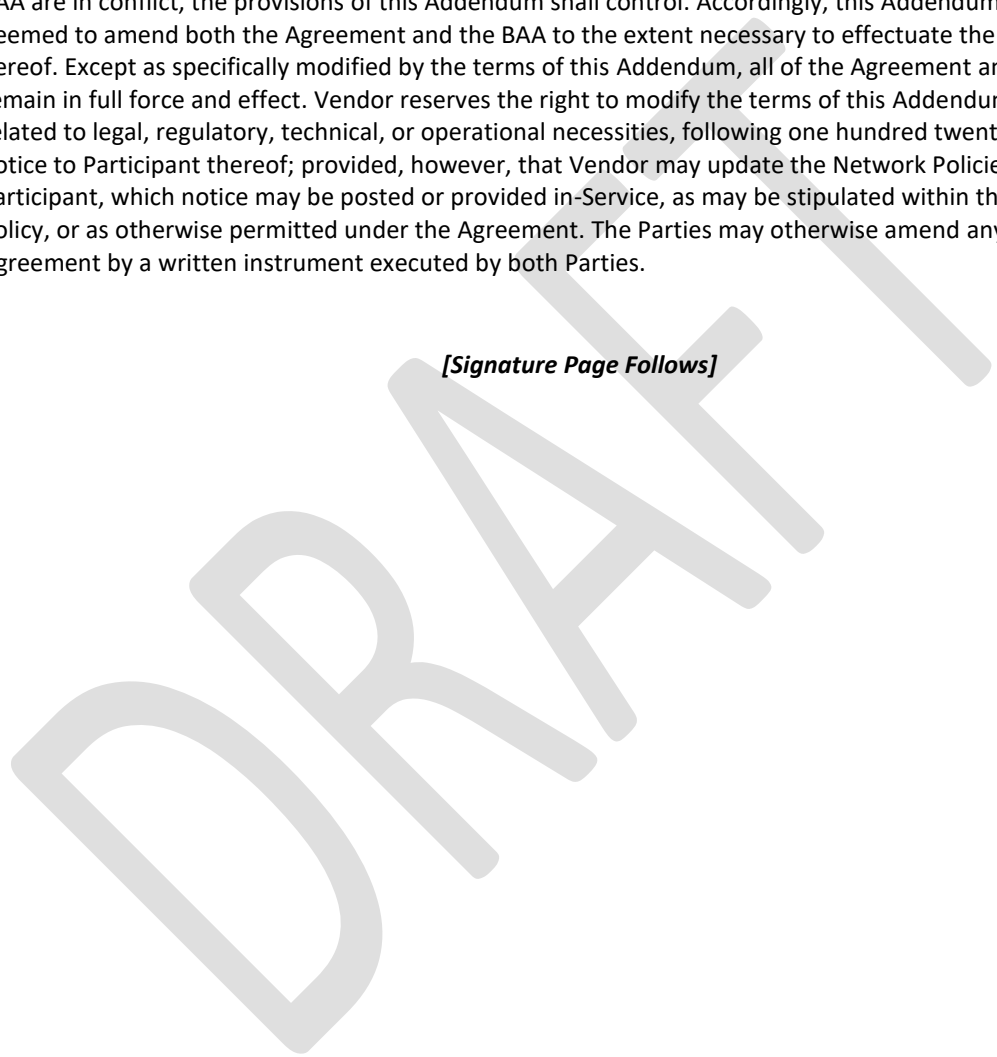
241 4.8.2. *Transaction Data*. "**Transaction Data**" means information and statistics about Participant's  
242 interactions with and usage of the Services, but which does not contain Patient Data, Administrative  
243 Data, or Participant's Confidential Information. Vendor may use and disclose Transaction Data for  
244 any lawful purpose, including, by way of illustration and not limitation, (i) for the analysis,  
245 development, improvement, and provision of the Services and other Vendor products and services;  
246 (ii) for recordkeeping, fee calculation, internal reporting, support, and other internal business

247 purposes; (iii) to report the number and type of transactions and other statistical information  
248 concerning the Services; and (iv) to otherwise administer and facilitate the Services.

249 5. **Insurance.** Participant shall maintain, at no cost to Vendor, insurance coverage (including medical malpractice  
250 coverage) as is usually carried by the type and size of Participant, which shall cover the terms of this  
251 Agreement as amended, with limits commercially reasonable in connection with Participant’s facilities,  
252 Participant’s data, and Participant’s provision of health care services to Participant’s residents, so that such  
253 coverage shall be available in the event of a claim by any of Participant’s Users or resident(s) (or their  
254 representatives or estates) against Vendor.  
255

256 6. **Principles of Construction.** Whenever the provisions of this Addendum and the underlying Agreement or the  
257 BAA are in conflict, the provisions of this Addendum shall control. Accordingly, this Addendum shall be  
258 deemed to amend both the Agreement and the BAA to the extent necessary to effectuate the provisions  
259 hereof. Except as specifically modified by the terms of this Addendum, all of the Agreement and the BAA  
260 remain in full force and effect. Vendor reserves the right to modify the terms of this Addendum for any reason  
261 related to legal, regulatory, technical, or operational necessities, following one hundred twenty (120) days  
262 notice to Participant thereof; provided, however, that Vendor may update the Network Policies upon notice to  
263 Participant, which notice may be posted or provided in-Service, as may be stipulated within the applicable  
264 policy, or as otherwise permitted under the Agreement. The Parties may otherwise amend any part of the  
265 Agreement by a written instrument executed by both Parties.  
266

267 *[Signature Page Follows]*  
268



269 Participant's signatory below represents that they are entering into this Addendum on behalf of Participant and that they have the  
270 authority to bind Participant to this Addendum.

271 **UDACIOUS INQUIRY, LLC.**

**For Participant:** \_\_\_\_\_

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

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

273 Print Name: \_\_\_\_\_

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

274 Print Title \_\_\_\_\_

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

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

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

276 I have authority to bind this company.

I have authority to bind this company

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**EXAMPLE OF SOF**

**ATTACHMENT A**

**ED OPTIMIZATION SERVICE ORDER FORM**

ED Optimization	
Access by a hospital emergency department care providers and care managers to emergency department (ED) visit and inpatient (IP) visit admission, discharge, and transfer encounter data (e.g., patient or member identifier, admit date, location of visit, etc.) and care coordination content contributed by entities participating in the PointClickCare Network.	
<b>User Roles</b>	Account Manager Standard IT Patient Access Read Only
<b>User Access</b>	Direct Access (e.g., username & password) Single Sign-On (if supported)
<b>Data Sources</b>	ADT Feed (HL7 Messages) Historical Encounter File (one-time process during implementation)
<b>Notification Criteria</b>	Notifications trigger upon an encounter at Subscriber’s emergency department based on the following criteria: <ul style="list-style-type: none"> <li>• ED Utilization Criteria (e.g., 5+ ED Visits in 12 Months, 3+ ED Locations in 90 Days)</li> <li>• Care Insights Criteria (e.g., Patients with Active Insights, Patients with Flags, Patients with Active Security &amp; Safety Events)</li> </ul>
<b>Notification Methods</b>	Electronic (e.g., RTF, PDF, ASCII) ED Track Board (if supported by Subscriber/EMR technical teams) Print or Fax (PDF) Email or Text (SMS)
<b>Feature Pages</b>	Patient Overview ED Patient Activity Scheduled Reports Groups Notifications Manage Facility
<b>Additional Features</b>	Patient Demographic Information Tags (ability to designate patient population into groups) Care Team Insights Security & Safety Encounter Information Patient Search Customer Community (Help)
<b>Scheduled Reports</b>	ED Census w/ ED Counts (Monthly Report)

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Advanced Insight Bundles	
<b>Substance Abuse Bundle</b>	History of Opioid Overdose (12 months) History of Substance Use Disorder (12 months) History of Opioid Use Disorder (12 months) History of Alcohol Use Disorder (12 months) PDMP (where available) Substance Exposed Infants

<b>Critical Care Bundle</b>	History of Sepsis Diagnosis (12 months) Advanced Directive (if applicable) MDRO Imaging Type/Date/Location Recent Anticoagulant
<b>Mental Health Bundle</b>	History of Suicidal Ideation or Self-Harm History of Behavioral Health Diagnosis
<b>Social Determinants of Health Bundle</b>	Recent Housing Insecurity Other SDOH (as defined by future development)
<b>Readmission Bundle</b>	ED visit with Inpatient Admission in last 30 days at this facility ED visit with SNF Admission in last 30 days

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Fees & Key Terms	
<b>Quarterly Subscription Fee</b>	<p><b>Estimated Annual ED Visits:</b></p> <p><b>Price Per Annual ED Visit:</b></p> <p><u>ED Optimization:</u> \$1.00 per annual ED visit</p> <p><u>Advanced Insight Bundles:</u> One (1) Advanced Insight Bundle is included with Participant's subscription to ED Optimization at no additional charge to Participant. Each additional Advanced Insight Bundle is \$0.50 per annual ED visit. Check all Advanced Insight Bundles included under this Service Order Form:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Substance Abuse Bundle</li> <li><input type="checkbox"/> Clinical Care Bundle</li> <li><input type="checkbox"/> Mental Health Bundle</li> <li><input type="checkbox"/> Social Determinants of Care Bundle</li> <li><input type="checkbox"/> Readmission Bundle</li> </ul> <p><b>Quarterly Subscription Fee:</b></p> <hr/> <p>Participant will pay the Quarterly Subscription Fee indicated above within thirty (30) days of receipt of an invoice from Vendor.</p> <p>The <b>"Go Live Date"</b> means the first day on which Participant is able to receive notifications via ED Optimization.</p>

285

<b>Implementation Fees, Other Costs</b>	Vendor will not charge implementation fees or impose any costs other than the Quarterly Subscription Fee unless separately set forth in an addendum hereto (e.g., to access PDMP data); provided, however, that Participant will be responsible for (i) any fees imposed by third parties in connection with Participant's implementation of, or access to, the Services.
<b>Term</b>	The initial term of this SOF is one (1) year commencing on the Addendum Effective Date, after which this SOF will automatically renew for successive one (1) year renewal terms except to the extent that (i) either Party provides written notice of non-renewal of this SOF to the other Party not less than ninety (90) days prior to its renewal or (ii) this SOF or the underlying Agreement is terminated in accordance with the terms of the Agreement.

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*[End of Attachment A]*

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**Florida Health Information Exchange  
Subscription Agreement for Encounter Notification Service**

3 This Subscription Agreement is a multi-party agreement by and between the undersigned vendor,  
4 Audacious Inquiry, LLC (“Vendor”), under contract with the Agency for Health Care  
5 Administration (“AHCA”) for statewide health information exchange services and the other  
6 undersigned party (hereinafter referred to individually as “Participant”) acting as a data source or  
7 recipient of data and other Participants who have executed the same Subscription Agreement to  
8 subscribe to this Encounter Notification Service. The Florida Health Information Exchange  
9 General Participation Terms and Conditions attached hereto are hereby incorporated by reference  
10 (hereinafter “General Terms and Conditions”). This Subscription Agreement, any exhibits,  
11 attachments, or amendments thereto, and the incorporated General Terms and Conditions, are  
12 hereinafter referred to as either “Subscription Agreement” or “Agreement.”  
13

14 WITNESSETH:

15  
16 WHEREAS, AHCA has engaged Vendor to provide administration, management,  
17 oversight, and support of statewide health information exchange services through the Florida  
18 Health Information Exchange (Florida HIE);  
19

20 WHEREAS, AHCA will provide governance, guidance, and approval of said  
21 administration, management, oversight, and support, including defining Permitted Purposes,  
22 Participants, fees, and general Florida HIE policies and procedures; and  
23

24 WHEREAS, the purpose of the Encounter Notification Service is to support coordination  
25 of care activities;  
26

27 WHEREAS, Participant desires to subscribe to and utilize the Encounter Notification  
28 Service offered by Vendor, and Vendor agrees to provide such service;  
29

30 NOW THEREFORE, for and in consideration of the mutual covenants contained below  
31 and for other good and valuable consideration, the receipt and adequacy of which are hereby  
32 acknowledged, the parties hereto mutually agree to the following additional terms:  
33

- 34 1. **Definitions:** All definitions in the General Terms and Conditions, listed in *Attachment F*  
35 hereto, apply to this Subscription Agreement for Encounter Notification Service, and the  
36 following additional definitions apply to this Subscription Agreement for Encounter  
37 Notification Service:  
38  
39 a. **Encounter Notification Service (ENS)** shall mean the service provided by Vendor on  
40 the Network wherein the Participant may receive information and/or Health Data on an  
41 Individual from other Participants acting as a data source through the Network.  
42  
43 b. **Alert Message** shall mean the specific Health Data delivered by the ENS.



- c. **Encounter Data** shall mean specific Health Data made available by Participants for matching with Individuals in the Panel to enable creation of the Alert Message.
- d. **Panel** shall mean a listing of patients or members with identifying information to be used in matching to the Encounter Data received from Participants.

2. **Permitted Purposes for this Encounter Notification Service:** Participant may use Health Data received by it from other Participants only for the following purposes (and the other Permitted Purposes in the General Terms and Conditions):

- a. **Treatment.** Treatment of the Individual who is the subject of the Protected Health Information (PHI) received by the Participant or Participant User.
- b. **Health Care Operations.** Health Care Operations as defined in 45 Code of Federal Regulations (CFR) 164.501 and provided that the Participant or Participant User is receiving the PHI for their own use. Participant shall only use the Minimum Necessary PHI for such Health Care Operations purposes.
- c. **Public Health.** Public Health activities and reporting to the extent permitted by Applicable Law.
- d. **Payment.** Payment as defined in 45 CFR 164.501 and permitted by Applicable Law.
- e. **Other.** Any release or use of Health Data permitted by Applicable Law and consistent with any limitations set forth in the General Terms and Conditions.

3. **Responsibilities of Participants:**

- a. **Compliance with General Terms and Conditions.** Participant agrees to comply with the General Terms and Conditions. Failure to comply with the General Terms and Conditions shall be grounds for suspension or termination of this Subscription Agreement.
- b. **Network Operating Policies and Technical Requirements for ENS.** All Participants agree and are required to meet and comply with the Network Operating Policies and Technical Requirements for this Encounter Notification Service Agreement listed in *Attachment B* hereto.

4. **Vendor Responsibilities:**

- a. Vendor will provide the ENS by performing a matching of data received from Participants acting as a data source and delivery of the Alert Messages to the appropriate recipient. A copy of the Alert Messages may be provided to the Participant that provided the Encounter Data upon request. The messages will be delivered using Secure File Transfer Protocol (SFTP), Direct Messaging Service, or another means of secure delivery as mutually agreed by the parties to this Agreement.

- 90
- 91 b. Vendor will provide the Service Levels for availability of ENS help desk response times
- 92 as set forth in *Attachment E*.
- 93
- 94 c. Unless required by law, Vendor will not disclose to any third party audit trail data which
- 95 will collectively and individually be considered a trade secret in accordance with Section
- 96 812.081, Florida Statutes. Vendor will retain the audit trail data of transactions for a
- 97 terminated Participant for eight (8) years.
- 98
- 99 d. Vendor will maintain the confidentiality of the Panels received from Participants, and
- 100 will not use the Panel for any purpose not expressly permitted by the Participant.
- 101
- 102 e. Vendor will maintain the confidentiality of the Encounter Data received from Participants
- 103 acting as a data source, destroying the data immediately after use by Vendor.
- 104
- 105 f. Vendor's role is to facilitate the exchange of Health Data through the operation of the
- 106 Network, in accordance with this Subscription Agreement. Vendor has no role in
- 107 verifying the accuracy of Health Data received from Participants or verifying whether a
- 108 Participant, Participant User, or other individuals designated by Participant to receive
- 109 Alert Messages are authorized to send, receive, use or disclose particular information
- 110 and/or Health Data. Vendor will not collect information from the content of Alert
- 111 Messages.
- 112
- 113 5. **Fees:** Participant recipients of Alert Messages are charged an annual fee by Vendor which
- 114 may be billed quarterly as determined by Vendor. The fee may be changed upon ninety (90)
- 115 days written notice to Participants except for a fee reduction which can go into effect
- 116 immediately. The fee schedule is displayed as *Attachment D*.
- 117
- 118 6. **Term and Termination:** This Agreement will continue until and unless Vendor or
- 119 Participant terminates this Agreement. Such termination may be effected as provided for in
- 120 the General Terms and Conditions, or additionally, Vendor may terminate this Agreement
- 121 without cause by providing the Participant with at least thirty (30) days prior written notice.
- 122
- 123 7. **Miscellaneous:** If a provision of this Subscription Agreement conflicts with a provision in
- 124 the General Terms and Conditions, the provision of this Subscription Agreement controls.
- 125 Notices under this Agreement shall be given to the parties' respective email or physical
- 126 address listed in *Attachment C* to this Subscription Agreement.
- 127
- 128 8. **Effective Date of this Subscription Agreement:** This Subscription Agreement and the
- 129 General Terms and Conditions become effective when fully executed. This Agreement
- 130 supersedes any former agreement for the Event Notification Service.

March 2023

9. **Attachments.** The following Attachments are incorporated into this Agreement:

*Attachment A:* Addendum to the ENS Agreement

*Attachment B:* Network Operating Policies and Technical Requirements for the  
Encounter Notification Service

*Attachment C:* Addresses for Notice

*Attachment D:* Encounter Notification Service Fee Schedule

*Attachment E:* Service Level Agreement

*Attachment F:* Florida Health Information Exchange General Participation Terms &  
Conditions

*Attachment G:* Addendum to ENS Agreement for Patient Asserted Notifications

IN WITNESS WHEREOF, this Subscription Agreement has been entered into and executed by  
officials duly authorized to bind their respective parties.

Vendor

**Audacious Inquiry, LLC**

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

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

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

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

Participant acting as Data Source

**Entity Name:** \_\_\_\_\_

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

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

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

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

Participant acting as Recipient of Data

**Entity Name:** \_\_\_\_\_

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

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

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

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

**Attachment A: Addendum to the ENS Agreement**

THIS ADDENDUM (this “**Addendum**”) to the Florida Health Information Exchange Subscription Agreement for Encounter Notification Service in effect between Audacious Inquiry, LLC (“**Vendor**”), and the Participant (the “**Agreement**”) is effective upon execution by Participant pursuant to Section 21(d) of the Agreement (the “**Effective Date**”). Capitalized terms used but not defined in this Addendum will have the meaning set forth in the Agreement.

**RECITALS**

WHEREAS, Vendor was acquired by PointClickCare Technologies, Inc. (“**PointClickCare**”) on or about March 16, 2022.

WHEREAS, PointClickCare and its subsidiaries including Collective Medical Technologies, Inc., and Audacious Inquiry, LLC, (together, sometimes referred to as “**Affiliates**”), facilitate real-time patient care coordination and provide related services via the PointClickCare Network (defined below);

WHEREAS, Vendor and Participant desire that the patients of Participant benefit from the availability of such patients’ Health Data across the PointClickCare Network for Permitted Purposes (defined below);

WHEREAS, in order to facilitate the availability of Health Data across the PointClickCare Network, Participant and Vendor each desire to amend the Agreement as set forth herein;

NOW, THEREFORE, in consideration of these premises and the other covenants set forth below, the receipt and sufficiency of which being hereby acknowledged, Vendor and Participant agree that the Agreement is amended as follows:

**ADDENDUM**

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Addendum in their entirety and shall be given full force and effect as if set forth in the body of this Addendum.
2. **Additional Definitions.** Section 1 of the Agreement shall be amended to include the following definitions:
  - e. “**Affiliate**” means any organization (a) which controls, is controlled by, or is under common ownership or control with a Party; or (b) for which a Party directly or indirectly holds or controls fifty percent (50%) or more of the beneficial ownership or voting interest or the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract, or otherwise. For the avoidance of doubt, PointClickCare and Collective Medical Technologies, Inc. are Affiliates of Audacious Inquiry, LLC.
  - f. “**PointClickCare Network**” means the network facilitated by PointClickCare pursuant to which PointClickCare Network Participants share Protected Health Information for Permitted Purposes.
  - g. “**PointClickCare Network Participant**” means a covered entity, business associate, or other health care entity that participates in the PointClickCare Network by

211 executing an agreement with PointClickCare or its Affiliates for the exchange of  
212 Health Data for Permitted Purposes.

- 213  
214 3. **Permitted Purposes.** Section 2 of the Agreement is hereby amended and replaced in its  
215 entirety with the following:

216 2. **Permitted Purposes for this Encounter Notification Service:** In addition to  
217 the Permitted Purposes set forth in the General Terms and Conditions, the  
218 following shall be the Permitted Purposes for which Participant is authorized, and  
219 for which Participant hereby authorizes Vendor and its Affiliates, to use and  
220 disclose Health Data through the Network and the PointClickCare Network: (a)  
221 Treatment, (b) Payment, (c) Health Care Operations, (d) public health (as that  
222 term is used and defined at 45 CFR 164) activities and reporting, and (e) any other  
223 release or use of Health Data that is permitted by Applicable Law and consistent  
224 with the General Terms and Conditions.

- 225  
226 4. **Vendor Responsibilities.** Section 4(e) of the Agreement is hereby amended and replaced  
227 in its entirety as follows:

- 228 e. Vendor and its Affiliates will maintain the confidentiality of the Encounter Data  
229 received from Participants acting as a data source consistent with the terms of this  
230 Agreement and applicable law.

- 231 5. **Data Ownership and Use.**

232 Subsection 3(b)(i) of Attachment F of the Agreement is hereby amended and  
233 replaced in its entirety, as follows:

234 (i) Execution of Vendor's Duties under this Agreement. Vendor and its  
235 Affiliates shall have access to the Health Data, but only for the express  
236 purposes of connecting the Participants, facilitating the delivery of the  
237 Health Data on behalf of such Participants, and as otherwise set forth in this  
238 Agreement. Vendor does not claim any ownership in any of the content of  
239 Participant's Health Data, including any text, data, information, images,  
240 sound, video, or other material, that Participant may send via the Network.

241 Subsection 3(b) of Attachment F of the Agreement is hereby amended to add the  
242 following:

243 (iii) Limited License to Access, Use, and Disclose Participant Data. Subject  
244 to the terms and conditions of this Agreement, Participant hereby grants  
245 Vendor and its Affiliates a limited, non-exclusive, non-transferable, non-  
246 sublicensable license to access, use, and disclose the Health Data during the  
247 Term and during any period thereafter for which a Permitted Purpose exists,  
248 as applicable, to (a) process the data as instructed by AHCA (and to the  
249 extent not inconsistent therewith, by Participants or data sources solely with  
250 respect to their respective Data), (b) as necessary to provide the Encounter  
251 Notification Service for Participants' benefit as provided in this Agreement,  
252 (c) for the Permitted Purposes, and (d) as otherwise permitted in the  
253 Agreement.

254 (iv) Use and disclosure of Administrative Data and Transaction Data, by  
255 Vendor.

- 256 a. Administrative Data. “**Administrative Data**” means information  
257 identifying and pertaining to Participant and its Users, such as User  
258 contact information, but which does not contain Protected Health  
259 Information or Participant’s Proprietary Information, which Vendor uses  
260 to manage and administer the Encounter Notification Service and provide  
261 support to Participant and its Users. Vendor or its Affiliates may use and  
262 disclose Administrative Data for purposes of providing services to  
263 Participants and PointClickCare Network Participants, for the purposes set  
264 forth in any terms of use applicable to a service, for Vendor’s and its  
265 Affiliates proper management and administration, and as required by law.
- 266 b. Transaction Data. “**Transaction Data**” means information and statistics  
267 about Participant’s interactions with and usage of the Encounter  
268 Notification Service, but which does not contain Protected Health  
269 Information, Administrative Data, or Participant’s Proprietary  
270 Information. Vendor and its Affiliates may use and disclose Transaction  
271 Data for any lawful purpose, including, by way of illustration and not  
272 limitation, (i) for the analysis, development, improvement, and provision  
273 of Vendor or Affiliate products and services; (ii) for recordkeeping, fee  
274 calculation, internal reporting, support, and other internal business  
275 purposes; (iii) to report the number and type of transactions and other  
276 statistical information; and (iv) to otherwise administer and facilitate  
277 Vendor and Affiliate services.

278  
279 6. **Prohibited Purposes.** Section 3(e) of Attachment F of the Agreement is hereby amended  
280 and replaced in its entirety as follows:  
281

282 Neither Vendor or its Affiliates, nor any Participant, may access or use the Health Data of  
283 another party to compare patient volumes, practice patterns, or make any other  
284 comparison without all Participants’ written approval, except to the extent that such  
285 access or use is consistent with one or more Permitted Purposes. For the avoidance of  
286 doubt, neither Vendor or its Affiliates, nor any Participant, may access or use the  
287 Proprietary Information of another party to compare patient volumes, practice patterns, or  
288 make any other such comparison without prior written approval from any Participant  
289 whose data would be involved. Uses of Health Data not expressly permitted by this  
290 Agreement (including but not limited to Vendor or Affiliates reselling de-identified  
291 Health Data) are expressly prohibited under this Agreement without separate written  
292 approval from any Participant whose data would be involved.  
293

294 7. **Disposition of Health Data Upon Request; Feasibility.** Section 15 of Attachment F is  
295 hereby amended to add the following:  
296

- 297 g. **Disposition of Health Data Upon Request.** In addition to Vendor’s  
298 obligations to delete or destroy a terminated Participant’s data as set forth

above, Vendor shall, at any time requested by a Participant via notice during the term, but no more than once per calendar year, promptly and to the extent feasible, delete all the Health Data in Vendor’s possession that the Participant had delivered to Vendor no less than one (1) year prior to the date of such notice.

h. **Feasibility.** Participant acknowledges that among the possible reasons for which return, deletion, or destruction of Health Data by Vendor, as required in this Section 15, may not be feasible are instances in which the Health Data has been transmitted by Vendor to another Participant or PointClickCare Network Participant for Permitted Purposes hereunder and Vendor, therefore, must continue to hold such Health Data pursuant to a separate HIPAA business associate agreement between Vendor and such other party.

8. **Principles of Construction; Counterparts.** Whenever the terms or conditions of the Agreement and this Addendum are in conflict, the terms of this Addendum control. Except as specifically modified by the terms of this Addendum, all the terms of the Agreement shall remain in full force and effect. This Addendum may be executed in any number of counterparts, each of which is an original, but all counterparts of which constitute the same instrument.

IN WITNESS WHEREOF, this Addendum has been entered into and executed by officials duly authorized to bind their respective parties.

**Vendor**

Entity Name: Audacious Inquiry, LLC  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Participant**

Entity Name: \_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attachment B**

**Network Operating Policies and Technical Requirements for the Encounter Notification Service**

In addition to the other provisions in this Subscription Agreement (including the General Terms and Conditions), all Participants agree and are required to meet and comply at all times with the following Network Operating Policies and Technical Requirements for this Encounter Notification Service Agreement:

1. Delivery of Encounter Data. Participants acting as a data source will cooperate with Vendor to establish a mechanism by which Encounter Data may be transmitted to Vendor. The Encounter Data shall contain sufficient information to permit Vendor to match the patient with the Individuals listed in the Panels submitted by Participants. Participants acting as a data source shall filter restricted self-pay Encounter Data in compliance with 45 CFR § 164.522(a)(1)(vi) data and data subject to 42 CFR Part 2 which must be excluded. In order to assure that restricted data is filtered, all self-pay Encounter Data may be excluded by the data source.
2. Delivery of Panels. Participant recipients of data shall provide a Panel of members or patients to Vendor consistent with templates that Vendor shall provide to Participant. Thereafter, the Participant will provide Vendor with updates to the Panel as appropriate.
3. Delivery of Alert Messages. Participants are responsible for identifying their Participant Users or other individuals to receive Alert Messages. Participant recipients are responsible for assuring that the individuals receiving the Alert Messages have patient authorization to access and use the data required by Applicable Law.
4. Forwarding Alert Messages. Participant recipients that are health plans will forward the Alert Message to the appropriate primary care provider of a member as soon as reasonably practicable upon receipt in a manner consistent with Applicable Law.
5. Maintenance of Records. Participants are responsible for maintaining records for Accounting of Disclosures, public records, if applicable, records discovery, or any other purposes required by Applicable Law or the policies of the Participant. Any vendor support for the retrieval of records or other record handling requested or caused by the Participant will be subject to a fee to be paid by the Participant to Vendor.



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**Attachment C**  
**Addresses for Notice**

For notices to Participant, use:

Attention: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

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

For notices to Vendor, use:

Attention: Scott Afzal  
Audacious Inquiry, LLC  
5523 Research Park Drive, Suite 370  
Baltimore, MD 21228  
Tel: (301) 560-6999

**Attachment D**

**Encounter Notification Service Fee Schedule**

There are no fees to Participants to act as a Data Source.

Participants acting as Recipients of Data are charged as follows:

1. Health Plans
  - a. \$1.50 per-patient per-year for each of the initial 75,000 patients in a subscription and \$0.35 per-patient per-year for each patient thereafter.
  - b. The minimum annual fee for this participant type is \$7,500.
2. Dental Health Plans participating in the Florida Medicaid Managed Care program
  - a. \$0.30 per-patient per-year for each of the initial 50,000 patients in a subscription and \$0.15 per-patient per-year for each patient thereafter.
  - b. The minimum annual fee for this participant type is \$7,500.
3. Accountable Care Organizations
  - a. \$2.00 per-patient per-year for each of the initial 50,000 patients in a subscription and \$0.25 per-patient per-year for each patient thereafter.
  - b. The minimum annual fee for this participant type is \$7,500.
4. Licensed Provider Organizations
  - a. \$0.30 per-patient per-year for each of the initial 50,000 patients and \$0.15 per-patient per-year for each patient thereafter.
    - The minimum annual fee for this participant type is \$2,000.
  - b. The annual flat fee for panels with under 5,000 patients where Alert Messages are delivered according to Vendor specifications is \$500.
  - c. Applicable only to subscriptions comprised of patients who have received treatment from the Participant or its owned physician practices within the previous 12 months.
5. Licensed Provider Organizations Acting as Data Sources
  - a. \$0.22 per-patient per-year for each of the initial 50,000 patients in a subscription and \$0.11 per-patient per-year for each patient thereafter.
  - b. Panels with under 7,500 patients are assessed no annual fee.
    - The minimum annual fee for panels with 7,500 or more patients is \$2,000.
  - c. Applicable only to subscriptions comprised of patients who have received treatment from the Participant or its owned physician practices within the previous 12 months.

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**Attachment E**

**Service Level Agreement**

**1. General Service Request Support:**

- a. Office Hours - 8:00 AM to 5:00 PM Eastern Time Monday-Friday for general service requests via telephone and/or email.
- b. General service requests received outside of office hours will be collected; however, no action will be guaranteed until the next working day.

**2. Production Issue Support:**

- a. Production issue support is available twenty-four hours a day, seven days a week, by phone.
- b. Email will route to Vendor team members for investigation.
- c. Production downtime issues will be responded to twenty-four hours a day, seven days a week. Vendor will respond to service-related incidents and/or requests submitted within the following time frames:

<b>Priority</b>	<b>Operating Level Agreement (OLA) – Initial Response</b>	<b>Service Level Agreement (SLA) – Time to Resolution</b>	<b>Description</b>
High	Within 60 minutes	4 hours (during business hours)	Issues that involve the production application being unavailable (e.g., “system down” scenarios)
Medium	Within 12 hours (8 AM – 5 PM / Weekdays)	Within 48 hours	Issues that involve the serious degradation of application performance or functionality
Low	Within 24 hours (8 AM – 5 PM / Weekdays)	Within 5 working days	Issues that involve immaterial problems not affecting application performance

**3. Planned Downtime.** Vendor will notify ENS Participants about any planned maintenance or system downtimes that will disrupt data feeds and availability. On the last Wednesday of every month from 10:00 PM to 2:00 AM Eastern Time, all systems hosted by Vendor will be taken offline for security updates as part of a regularly scheduled monthly maintenance window. Participants can expect to experience intermittent outages during this maintenance window. The inbound and outbound data will queue during this time and will catch up at the conclusion of the downtime.

**4. Unplanned Downtime.** Vendor has monitoring in place capable of generating alerts for disruptions to data feeds, connectivity, and overall infrastructure uptime associated with the ENS. Vendor will communicate openly about any downtime that disrupts the service for more than several hours and regularly until the downtime is resolved.

**Attachment F**

**Florida Health Information Exchange  
General Participation Terms and Conditions**

The following Florida Health Information Exchange General Participation Terms and Conditions (hereinafter “General Terms and Conditions”) apply to the use of services offered as part of the Florida HIE program and are incorporated by reference into the Subscription Agreements related thereto. Each Subscription Agreement is a multi-party agreement and establishes the provisions and obligations to which all signatories (“parties”) agree. These General Terms and Conditions, together with the Subscription Agreements, set forth the provisions governing accessing Health Data through the Network.

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meaning ascribed to them below. All defined terms are capitalized throughout this Agreement.

a. **Agreement** shall mean a Subscription Agreement together with these General Terms and Conditions, which are incorporated into each Subscription Agreement by reference.

b. **AHCA** shall mean the Agency for Health Care Administration, a State of Florida agency.

c. **Applicable Law** shall mean all applicable statutes, rules and regulations of Florida, as well as all applicable federal statutes, rules, and regulations.

d. **Breach** shall mean an impermissible use or disclosure under the Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) that compromises the security or privacy of the protected health information. Breach excludes:

(i) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

(ii) Any inadvertent disclosure by a person who is authorized to access protected health information at a covered entity or business associate to another person authorized to access PHI at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.

(iii) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

492 Except as provided in (i) through (iii) above of this definition, an acquisition, access,  
493 use, or disclosure of PHI in a manner not permitted under the Privacy Rule is  
494 presumed to be a breach unless the covered entity or business associate, as applicable,  
495 demonstrates that there is a low probability that the protected health information has  
496 been compromised based on a risk assessment of at least the following factors:  
497

498 (i) The nature and extent of the PHI involved, including the types of identifiers and  
499 the likelihood of re-identification;

500 (ii) The unauthorized person who used the PHI or to whom the disclosure was made;

501 (iii) Whether the PHI was actually acquired or viewed; and

502 (iv) The extent to which the risk to the PHI has been mitigated.

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507 e. **Business Associate** shall mean Vendor when it, pursuant to this Agreement:

508  
509 i. on behalf of a Covered Entity Participant, but other than in the capacity of a  
510 member of the workforce of such Covered Entity, performs, or assists in the  
511 performance of:

512  
513 1. a function or activity involving the use or disclosure of PHI, or

514  
515 2. any other function or activity regulated by the Health Insurance  
516 Portability and Accountability Act (HIPAA) Privacy Rule, or

517  
518 ii. provides, other than in the capacity of a member of the workforce of a  
519 Covered Entity Participant, consulting, data aggregation (as defined in 45  
520 CFR § 164.501), management, administrative, or other services to or for a  
521 Covered Entity Participant, where the provision of the service involves the  
522 disclosure of PHI from such Covered Entity Participant, or from another  
523 business associate of the Covered Entity Participant to the Business Associate.  
524

525 f. **Common Network Resource** shall mean software, utilities and automated tools  
526 made available for use in connection with the Network and which have been  
527 designated as a “Common Network Resource” by Vendor.  
528

529 g. **Covered Entity** shall mean a Participant that is a health care provider who transmits  
530 any health information in electronic form in connection with a transaction covered by  
531 45 CFR Parts 160, 162, or 164; or a health plan as that term is defined at 45 CFR Part  
532 160.103.  
533

534 h. **Designated Record Set** shall have the meaning set forth at 45 CFR § 164.501 of the  
535 HIPAA Regulations.

- 536 i. **Discloser** shall mean Vendor or a Participant that discloses Proprietary Information to  
537 a Receiving Party.
- 538
- 539 j. **Dispute** shall mean any controversy, dispute, or disagreement arising out of or  
540 relating to this Agreement.
- 541
- 542 k. **Health Care Operations** shall have the meaning set forth at 45 CFR § 164.501 of the  
543 HIPAA Regulations.
- 544
- 545 l. **Health Data** shall mean that information which is requested, disclosed, stored on,  
546 made available on, or sent by a Participant, or requested or sent by Vendor (only for  
547 operational purposes) through the Network. This includes, but is not limited to, PHI,  
548 individually identifiable health information, de-identified data, or limited data sets (as  
549 defined in the HIPAA Regulations), pseudonymized data, metadata, and schema.
- 550
- 551 m. **HHS Secretary** shall mean the Secretary of the United States Department of Health  
552 and Human Services or his or her designee.
- 553
- 554 n. **HIPAA Regulations** shall mean the Standards for Privacy of Individually  
555 Identifiable Health Information and the Security Standards for the Protection of  
556 Electronic Protected Health Information (45 CFR Parts 160, 162 and 164)  
557 promulgated by the U.S. Department of Health and Human Services under the Health  
558 Insurance Portability and Accountability Act (HIPAA) of 1996 and the Health  
559 Information Technology for Economic and Clinical Health Act (the HITECH Act) of  
560 the American Recovery and Reinvestment Act of 2009, as in effect on the date of this  
561 Agreement and as may be amended, modified, or renumbered.
- 562
- 563 o. **HITECH** shall mean the Health Information Technology for Economic and Clinical  
564 Health Act of 2009 (which is part of the American Recovery and Reinvestment Act of  
565 2009 (ARRA)), and any of its implementing regulations.
- 566
- 567 p. **Individual** shall mean a person who is the subject of PHI, and shall have the same  
568 meaning as the term “individual” as defined in 45 CFR § 160.103 and shall include a  
569 person who qualifies as a personal representative in accordance with 45 CFR §  
570 164.502(g).
- 571
- 572 q. **Individually Identifiable Health Information** shall have the meaning set forth at 45  
573 CFR § 160.103 of the HIPAA Regulations.
- 574
- 575 r. **Material** shall mean, for the purposes of Section 4 (Network Operating Policies and  
576 Technical Requirements) only, the implementation of, or change to, a Network  
577 Operating Policy or Technical Requirement that will: (i) have a significant adverse  
578 operational or financial impact on at least 20% of Participants; (ii) require at least  
579 20% of Participants to materially modify their existing agreements with or policies or  
580 procedures that govern Participant Users or Participant’s subcontractors.

- 581
- 582 s. **Minimum Necessary** shall refer to the standard set forth at 45 CFR § 164.502(b) and  
583 164.514(d) of the HIPAA Regulations.
- 584
- 585 t. **Network** shall mean the network operated by Vendor that allows for the exchange of  
586 Health Data and/or information between and among Participants and Participant  
587 Users, as specifically described in this Agreement for:
- 588
- 589 i. Direct exchange, as applicable; or  
590 ii. Search, retrieval and/or delivery, as applicable.
- 591
- 592 u. **Network Operating Policies and Technical Requirements** shall mean the policies  
593 and procedures that Participant must have in place and the technical requirements that  
594 must be met by a Participant for participating in the Network and sending and/or  
595 receiving Health Data (as applicable) for the particular service(s) to which Participant  
596 is subscribed, which Network Operating Policies and Technical Requirements are set  
597 forth for each subscribed service and as are amended from time to time in accordance  
598 with Section 4 (Network Operating Policies and Technical Requirements).
- 599
- 600 v. **Notice** or **Notify** shall mean a written communication, unless otherwise specified in  
601 this Agreement, sent to the appropriate party's representative at the address listed in  
602 the Subscription Agreement in compliance with Section 20 of the General Terms and  
603 Conditions.
- 604
- 605 w. **Participant** shall mean any organization that (i) meets the requirements for  
606 participation in the Network as contained in the applicable Network Operating  
607 Policies and Technical Requirements, (ii) is accepted by Vendor for participation, and  
608 (iii) is a signatory to this Agreement.
- 609
- 610 x. **Participant Users** shall mean those persons who have been authorized by Participant  
611 to access Health Data through the Network and in a manner defined by the respective  
612 Participant, in compliance with the terms and conditions of this Agreement and  
613 Applicable Law. "Participant Users" may include, but are not limited to, health care  
614 providers and employees, contractors, or agents of a Participant.
- 615
- 616 y. **Payment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA  
617 Regulations.
- 618
- 619 z. **Permitted Purposes** shall mean the reasons for which Participant Users may  
620 legitimately exchange or use Health Data through the Network as defined in Section  
621 3.
- 622
- 623 aa. **Proprietary Information**, for the purposes of this Agreement, shall mean proprietary  
624 or confidential materials or information of a Discloser in any medium or format that a  
625 Discloser labels as such or that is commonly understood to be proprietary

626 information. Proprietary Information includes, but is not limited to: (i) the Discloser's  
627 designs, drawings, procedures, trade secrets, processes, specifications, source code,  
628 System architecture, processes and security measures, research and development,  
629 including, but not limited to, research protocols and findings, passwords and  
630 identifiers, new products, and marketing plans; (ii) proprietary financial and business  
631 information of a Discloser; and (iii) information or reports provided by a Discloser to  
632 a Receiving Party pursuant to this Agreement. Notwithstanding any label to the  
633 contrary, Proprietary Information does not include Health Data; any information  
634 which is or becomes known publicly through no fault of a Receiving Party; is learned  
635 of by a Receiving Party from a third party entitled to disclose it; is already known to a  
636 Receiving Party before receipt from a Discloser as documented by Receiving Party's  
637 written records; or, is independently developed by Receiving Party without reference  
638 to, reliance on, or use of, Discloser's Proprietary Information.  
639

640 **bb. Protected Health Information** shall have the meaning set forth at 45 CFR § 160.103  
641 of the HIPAA Regulations, and may also be referred to as PHI.

642 **cc. Psychotherapy Notes** shall have the meaning set forth at 45 CFR § 164.501 of the  
643 HIPAA Regulations.  
644

645 **dd. Qualified Service Organization** shall have the same meaning as 42 CFR § 2.11, and  
646 may also be referred to as a QSO.  
647

648 **ee. Receiving Party** shall mean a Participant that receives Proprietary Information from  
649 a Discloser.  
650

651 **ff. Recipient** shall mean the person(s) or organization(s) that receives Health Data  
652 through the Network for a Permitted Purpose. "Recipients" may include, but are not  
653 limited to, Participants, Participant Users, and Vendor.  
654

655 **gg. Required By Law** shall have the meaning set forth at 45 CFR § 164.103 of the  
656 HIPAA Regulations.  
657

658 **hh. System** shall mean software, portal, platform, or other electronic medium controlled  
659 by a Participant through which the Participant sends, receives, discloses or uses  
660 Health Data through or from the Network. For the purposes of this definition, it shall  
661 not matter whether the Participant controls the software, portal, platform, or medium  
662 through ownership, lease, license, or otherwise.  
663

664 **ii. Treatment** shall have the meaning set forth at 45 CFR § 164.501 of the HIPAA  
665 Regulations.  
666

667 **2. Administration of the Network.**  
668



669 a. **Vendor Role.** The parties acknowledge that Vendor has no control over the content  
670 of the Health Data available through the Network, or the activities of the Participants  
671 and Participant Users. The accuracy of any Health Data, as well as the authority of  
672 any Participant Users to access or disclose Health Data are the responsibility of the  
673 Participants and not Vendor. Participant acknowledges that Vendor's obligations are  
674 limited to implementing and maintaining the technical infrastructure of the Network  
675 in addition to other activities specified in this Agreement, as well as the following  
676 administrative activities:

- 677
- 678 i. New Participants. Vendor will review, evaluate and act upon requests  
679 submitted by organizations that want to become a Participant to a particular  
680 service on the Network, and determine whether such organizations meet the  
681 policy, technical, and operational requirements established by Vendor to  
682 become new Participants, and execute one or more Subscription Agreements  
683 with any such new Participants, when appropriate. No further action or  
684 approval is required by other Participants for the addition of new Participants  
685 pursuant to this section.
  - 686
  - 687 ii. Vendor Responsibilities and Subcontractors. Vendor may delegate  
688 responsibilities related to the Network administration to one or more  
689 subcontractors. Vendor shall ensure that any subcontractor executes an  
690 agreement that only specifically authorized representatives of its subcontractor  
691 shall be granted access to the Network in connection with subcontractor's  
692 responsibilities, that the subcontractor will comply with the Business  
693 Associate provisions of this Agreement (detailed in Section 12) and the  
694 Qualified Service Organization provisions of this Agreement (detailed in  
695 Section 13), and will comply with the confidentiality provisions of this  
696 Agreement and Applicable Law. The Participants acknowledge and agree that  
697 access to Health Data, Proprietary Information (if necessary), and other  
698 relevant data (including aggregate data) shall be granted to Vendor for all of  
699 its functions and obligations under this Agreement and shall be granted to  
700 Vendor's subcontractors for the sole purpose of assisting Vendor in  
701 maintaining the technical operations of the Network. Vendor shall give notice  
702 to the Participants of who it is using as subcontractors for any work on the  
703 Network. Vendor and any of its subcontractors shall employ security  
704 mechanisms that are consistent with the Security Standards of the HIPAA  
705 Regulations to provide for the security of the information. Further, Vendor  
706 will not store, transmit or access any Health Data outside of the United States  
707 of America, and Vendor will not permit any subcontractors to store, transmit,  
708 or access any Health Data outside of the United States of America.

709

710 b. **Business Associate of Covered Entity Participants.** Vendor is a Business Associate  
711 of each Participant who is considered a "Covered Entity" under HIPAA Regulations.  
712 The provisions governing this Business Associate relationship are included in Section  
713 12 of the General Terms and Conditions..

- 714 c. **Qualified Service Organization of Participants with 42 CFR Part 2 Program(s).**  
715 Vendor is a Qualified Service Organization of Participants who have programs  
716 covered by 42 C.F.R. Part 2 (certain federally-funded substance abuse treatment  
717 programs). The provisions governing this Qualified Service Organization relationship  
718 are included in Section 13 of the General Terms and Conditions.
- 719
- 720 d. **Additional Sources of Health Data.** Vendor may enter into agreements with other  
721 entities who can serve as sources of PHI or other data for the Network (e.g., private  
722 lab test results, prescription history from a pharmacy benefit manager, immunization  
723 registry data) that would be beneficial to the Network and/or to Participants and make  
724 that available through the Network for certain services. If applicable to this  
725 Agreement, such agreements shall not be inconsistent with the provisions of this  
726 Agreement, and Participant shall treat such Health Data from such additional sources  
727 in the same manner as other Health Data on the Network. Advance notice of any new  
728 sources of Health Data shall be given by Vendor to the Participants that would have  
729 access to such additional data sources.
- 730
- 731 e. **Provision of Network Equipment and Software.** Vendor will provide the computer  
732 software necessary to allow Participants to access Health Data on the Network;  
733 however, Participants must also have the software and other infrastructure that meets  
734 the applicable Network Operating Policies and Technical Requirements for the  
735 particular service(s) Participant is subscribed to in order to interface with Vendor's  
736 system. Participants shall arrange for their own carrier lines, computer terminals or  
737 personal computers, printers, or other equipment for accessing the Network, and shall  
738 ensure that they are properly configured to access the Network including but not  
739 limited to the base workstation operating system, web browser and Internet  
740 connectivity. Any equipment, software, or intellectual property provided by Vendor  
741 to Participants shall remain the property of Vendor, unless otherwise specified. Any  
742 equipment or communication lines supplied by individual Participants shall remain  
743 the sole property of the supplying Participant.
- 744
- 745 f. **Accounting of Disclosures.** Upon Participant's written request, Vendor shall provide  
746 an accounting of disclosures of PHI made by Participant via the Network within ten  
747 (10) business days of such request, in order for Participant (or Participant's Users) to  
748 comply with HIPAA, HITECH and all Applicable Law. Vendor shall not, and shall  
749 not be required to, accept and respond to direct inquiries from a Participant's, or a  
750 Participant User's, patient or their legal representative. Vendor shall refer all inquiries  
751 from individuals to their known Participants for response.

752

753 3. **Use of Health Data.**

754

- 755 a. **Subscription Agreement.** Each Participant enters into a Subscription Agreement  
756 with Vendor for each health information exchange service that it desires to participate  
757 in and allow its Health Data to be utilized for, and Participant's Health Data will only  
758 be used for those Permitted Purposes listed below and those specified in the

759 Subscription Agreement(s) for the particular service(s) to which Participant has  
760 subscribed by executing the Subscription Agreement(s).

761  
762 b. **Permitted Purposes.** The Network shall be used only for Permitted Purposes listed  
763 below. Each Participant shall require and ensure that its Participant Users only use the  
764 Network for the Permitted Purposes. Participants shall ensure that they have obtained  
765 any authorization and consents from Individuals that may be required under  
766 Applicable Law prior to requesting or accessing Health Data via the Network for  
767 particular Individuals.

768  
769 i. Execution of Vendor's Duties under this Agreement. Vendor shall have access  
770 to the Health Data, but only for the express purpose of connecting the  
771 Participants and facilitating the delivery of the Health Data on behalf of such  
772 Participants and otherwise fulfilling its obligations under the Agreement.  
773 Vendor shall have no rights to access or use any Health Data beyond that  
774 limited purpose. Vendor shall not store any Health Data, except to the extent  
775 necessary for temporary cache or similar purposes , and except in  
776 circumstances where Vendor will be hosting certain data at the request of any  
777 applicable Participant whose data is involved. Vendor does not claim any  
778 ownership in any of the content, including any text, data, information, images,  
779 sound, video or other material, that Participant may send, store or receive via  
780 the Network.

781  
782 ii. Other Specified Purposes Listed in Subscription Agreement. The Subscription  
783 Agreement contains one or more specific permitted purposes for which the  
784 Participant who executes such Subscription Agreement is using the Network.  
785 Those specified permitted purposes in the Subscription Agreement only apply  
786 to those Participants who have subscribed to that same service.

787  
788 c. **Permitted Future Uses (Re-Disclosure).** Subject to Section 15.g. of the General  
789 Terms and Conditions (Disposition of Health Data on Termination), Recipients may  
790 retain, use and re-disclose Health Data received in response to a request in accordance  
791 with Applicable Law and the Recipient's policies and procedures.

792  
793 d. **Management Uses.** Vendor may request information from Participant related to  
794 potential breach or other security or technical issue, and Participant shall not  
795 unreasonably refuse to provide information to Vendor for such purposes.  
796 Notwithstanding the preceding sentence, in no case shall a Participant or Vendor be  
797 required to disclose PHI to Vendor in violation of Applicable Law. Any information,  
798 other than Health Data, provided by a Participant to Vendor shall be treated as  
799 Proprietary Information in accordance with Section 11 of the General Terms and  
800 Conditions (Proprietary Information) of this Agreement unless agreed otherwise.  
801 Vendor shall have access to all Health Data and Proprietary Information necessary in  
802 order to fulfill its duties under this Agreement.

- 803 e. **Prohibited Purposes.** Neither Vendor, nor any Participant, may access or use the  
804 Health Data or any Proprietary Information of another party to compare patient  
805 volumes, practice patterns, or make any other comparison without all Participants'  
806 written approval. Other uses of the Health Data (including but not limited to Vendor  
807 reselling de-identified data) are expressly prohibited under this Agreement without  
808 prior written approval from any Participant whose data would be involved.  
809

810 4. **Network Operating Policies and Technical Requirements**  
811

- 812 a. **General Compliance.** Each Participant shall comply with the Network Operating  
813 Policies and Technical Requirements that are applicable to the health information  
814 exchange services that Participant has subscribed to through its Subscription  
815 Agreement(s).  
816
- 817 b. **Adoption of Network Operating Policies and Technical Requirements.** The  
818 Participants hereby grant Vendor the power to adopt new Network Operating Policies  
819 and Technical Requirements, and to adopt amendments to, or repeal and replacement  
820 of, the same at any time through the Change Process described in the next subsection.  
821 Unless otherwise Required By Law, or necessary to maintain the stability of the  
822 Network, these Network Operating Policies and Technical Requirements shall not  
823 alter the relative rights and obligations of the parties under the Agreement and shall  
824 not be inconsistent with the Agreement.  
825
- 826 c. **Change Process.**  
827
- 828 i. **Determination of Materiality.** Vendor shall provide reasonable advance  
829 notification to all Participants subscribed to a particular service of any  
830 proposed new, or change to existing, Network Operating Policies and  
831 Technical Requirements that apply to that particular service. Vendor shall  
832 consider feedback from all Participants including any comments on fiscal  
833 impact and then determine, in its sole discretion, whether such proposal is  
834 Material. If Vendor determines that the proposal is not Material, then Vendor  
835 shall follow the change process in the Section 4(c)(ii). If Vendor determines  
836 that the proposal is Material, then Vendor shall follow the change process in  
837 Section 4(c)(iii).  
838
- 839 ii. **Non-Material Changes.** Vendor may implement any new Network Operating  
840 Policies and Technical Requirements, or amend, or repeal and replace any  
841 existing Network Operating Policies and Technical Requirements, for a  
842 particular service at any time by providing all Participants notice of the  
843 change at least thirty days prior to the effective date of the change so long as  
844 the new or amended Network Operating Policies and Technical Requirements  
845 to the particular service are not Material. Within fifteen days of receiving  
846 notice of the non-Material change, a Participant may request that Vendor  
847 delay implementation of the change based on unforeseen complications or

848 other good cause. Vendor shall respond to a request to delay implementation  
849 within seven days of receiving the request.

- 850
- 851 iii. **Material Changes.** A material change to Network Operating Policies and  
852 Technical Requirements shall be made by an amendment to the Agreement as  
853 provided in Section 21.d. of the General Terms and Conditions  
854 (Amendments).  
855
- 856 iv. **Change Required to Comply with Federal or Florida State Law or for the**  
857 **Stability of the Network.** If a new or changed Network Operating Policy and  
858 Technical Requirement for a service is required for Vendor, or the Participants  
859 to comply with federal statutes or regulations, or Florida statutes or  
860 regulations, or to maintain the stability of the Network (e.g., the performance  
861 and integrity of data exchanged among Participants), Vendor shall seek input  
862 from all Participants prior to implementing such change, but is not required to  
863 follow the processes required by Sections 4(c)(ii) and (iii) above. Vendor shall  
864 not require Participants to comply with such new or changed Network  
865 Operating Policies and Technical Requirements prior to the legally required  
866 effective date of such federal or Florida state statute or regulation, or federal  
867 contract deadline, as applicable. Vendor shall notify Participants immediately  
868 in the event of a change that is required in order to comply with federal or  
869 Florida state statute or regulation, or to maintain the stability of the Network.  
870
- 871 v. **Participant Duty to Terminate Participation or Subscription, as**  
872 **Applicable.** If, as a result of a change made by Vendor in accordance with  
873 this Section 4(c), a Participant will not be able to comply with the Network  
874 Operating Policies and Technical Requirements or does not otherwise desire  
875 to continue subscribing to the service, then such Participant shall as its sole  
876 remedy terminate its subscription to the service in accordance with the  
877 relevant Subscription Agreement's terms.  
878

879 5. **Requirements for Participants.**  
880

- 881 a. **Compliance.** All use of and interactions with the Network by Participant (and  
882 Participant's Users) shall comply with all applicable Network Operating Policies and  
883 Technical Requirements, these General Terms and Conditions, any Subscription  
884 Agreement(s) between Vendor and Participant, any agreements between Participant  
885 and its Participant Users, and Applicable Law. Nothing in this Section shall require a  
886 disclosure that is contrary to a restriction (granted by the Participant) placed on PHI  
887 by a patient pursuant to Applicable Law. Participant shall be solely responsible for  
888 maintaining patient medical records, as applicable, in accordance with Applicable  
889 Laws, and shall not rely upon Health Data transmitted to, and temporarily stored on,  
890 the Network for meeting Participant's obligations under any such laws.  
891
- 892 b. **Participant's Users and System Access Policies.** Each Participant shall have written  
893 policies and procedures in place that govern its Participant Users' ability to access

894 information on or through the Participant’s System and through the Network  
 895 (“Participant Access Policies”). Each Participant acknowledges that Participant  
 896 Access Policies will differ among them as a result of differing Applicable Law and  
 897 business practices. At a minimum, each Participant shall ensure that it has a valid and  
 898 enforceable written agreement with each of its Participant Users, and/or policies and  
 899 procedures that Participant Users are required to comply with, that ensure that any  
 900 Health Data accessed by its Participant Users is: (i) for a Permitted Purpose; (ii)  
 901 supported by appropriate legal authority for obtaining the Health Data; (iii) requested  
 902 and viewed by a Participant User with the legal authority to have such access, and (iv)  
 903 as soon as reasonably practicable after determining that a Breach occurred, report  
 904 such Breach to the Participant. Further, each Participant shall employ a process for  
 905 identity proofing that meets or exceeds National Institutes of Standards and  
 906 Technology (NIST) Level 3 requirements in effect as of the date of execution of this  
 907 Agreement by which the Participant, or its designee, validates sufficient information  
 908 to uniquely identify each person seeking to become a Participant User prior to issuing  
 909 credentials that would grant the person access to the Participant’s System. Participant  
 910 is solely responsible for authenticating Participant’s own Participant Users for that  
 911 access. Each Participant represents that it shall have the ability to monitor and audit  
 912 all access to and use of its System related to this Agreement, for system  
 913 administration, security, and other legitimate purposes. Each Participant agrees to  
 914 enforce the provisions of this Agreement including but not limited to any provisions  
 915 regarding limitations on Permitted Purposes for access to the Health Data and any  
 916 confidentiality provisions of this Agreement by appropriately training all Participant  
 917 Users, and disciplining individuals within each Participant’s organization who violate  
 918 such provisions pursuant to each Participant’s respective Participant Access Policies.  
 919 Participant shall also require that its Participant Users keep on file any signed patient  
 920 authorization or consent forms that may be required for documentation regarding  
 921 access to Health Data from the Network, as well as any documentation of emergency  
 922 accesses of Health Data from the Network (pursuant to any applicable Network  
 923 Operating Policies and Technical Requirements).

- 924
- 925 c. **Other Impermissible Purposes.** Participant shall not use the Network or permit any  
 926 Participant User to use the Network to conduct any business or activity, or solicit the  
 927 performance of any activity, which is prohibited by or would violate any Applicable  
 928 Law or legal obligation, or for purposes that may create civil or criminal liability,  
 929 including but not limited to: (i) uses which are defamatory, deceptive, obscene, or  
 930 otherwise inappropriate; (ii) uses that violate or infringe upon the rights of any other  
 931 person, such as unauthorized distribution of copyrighted material; (iii) “spamming,”  
 932 sending unsolicited bulk e-mail or other messages on the Network or sending  
 933 unsolicited advertising or similar conduct; (iv) threats to or harassment of another; (v)  
 934 knowingly sending any virus, worm, or other harmful component; and (vi)  
 935 impersonating another person or other misrepresentation of source.
- 936
- 937 d. **Cooperation.** To the extent not legally prohibited, each Participant shall: (i)  
 938 cooperate fully with Vendor and each other Participant with respect to such activities  
 939 as they relate to this Agreement; (ii) provide such information to Vendor and/or each

940 other Participant as they may reasonably request for purposes of performing activities  
941 related to this Agreement, (iii) devote such time as may reasonably be requested by  
942 Vendor to review information, meet with, respond to, and advise Vendor or other  
943 Participants with respect to activities as they relate to this Agreement; (iv) provide  
944 such reasonable assistance as may be requested by Vendor when performing activities  
945 as they relate to this Agreement; and (v) subject to a Participant's right to restrict or  
946 condition its cooperation or disclosure of information in the interest of preserving  
947 privileges in any foreseeable dispute or litigation or protecting a Participant's  
948 Proprietary Information, provide information and assistance to Vendor or other  
949 Participants in the investigation of Breaches and Disputes. In no case shall a  
950 Participant be required to disclose PHI in violation of Applicable Law. In seeking  
951 another Participant's cooperation, each Participant shall make all reasonable efforts to  
952 accommodate the other Participant's schedules and operational concerns. A  
953 Participant shall promptly report, in writing to any other Participant, and Vendor, any  
954 problems or issues that arise in working with the other Participant's employees,  
955 agents, or subcontractors that threaten to delay or otherwise adversely impact a  
956 Participant's ability to fulfill its responsibilities under this Agreement.  
957

- 958 e. **Backup.** Participant is responsible for developing and maintaining backup procedures  
959 to be used in the event of a failure or unavailability of the Network, and is responsible  
960 for implementing any such backup procedures, as determined necessary by  
961 Participant.  
962

963 6. **Enterprise Security.**  
964

- 965 a. **Safeguards.** Vendor and each Participant shall be responsible for maintaining a  
966 secure environment that supports access to, use of, and the continued development of  
967 the Network. Each Participant and Vendor shall use appropriate safeguards to prevent  
968 use or disclosure of PHI by such party other than as permitted by this Agreement,  
969 including appropriate administrative, physical, and technical safeguards that protect  
970 the confidentiality, integrity, and availability of PHI through the Network.  
971 Appropriate safeguards for Participants and Vendor shall be those identified in the  
972 HIPAA Security Rule, 45 CFR Part 160 and 164, Subparts A and C, regardless of  
973 whether Participant is subject to HIPAA Regulations. Participants shall also be  
974 required to comply with any applicable Network Operating Policies and Technical  
975 Requirements that may define expectations for Participants with respect to enterprise  
976 security.  
977

- 978 b. **Malicious Software.** In participating in the Network, each Participant and Vendor  
979 shall ensure that it employs security controls that meet applicable industry or Federal  
980 standards so that the information and Health Data being transmitted and any method  
981 of transmitting such information and Health Data will not introduce any viruses,  
982 worms, unauthorized cookies, Trojans, malicious software, "malware," or other  
983 program, routine, subroutine, or data designed to disrupt the proper operation of a  
984 System, the Network or any part thereof, or any hardware or software used by a  
985 Participant or Vendor in connection therewith, or which, upon the occurrence of a

986 certain event, the passage of time, or the taking of or failure to take any action, will  
987 cause a System or the Network or any part thereof or any hardware, software or data  
988 used by a Participant or Vendor in connection therewith, to be improperly accessed,  
989 destroyed, damaged, or otherwise made inoperable. In the absence of applicable  
990 industry standards, each Participant and Vendor shall use all commercially reasonable  
991 efforts to comply with the requirements of this Section.

- 992
- 993 c. **Other.** Participant will not knowingly use the Network, and will not permit any of its  
994 Participant Users to use the Network, (i) in a manner that significantly and adversely  
995 affects the performance or availability to other Participants of the Network, (ii) in a  
996 manner that interferes in any way with Vendor's computers or network security, or  
997 (iii) to attempt to gain unauthorized access to Vendor's or any Participant's computer  
998 system.

1000 7. **Breach Notification.**

- 1001
- 1002 a. **Procedure for Notification of Vendor and Impacted Participants.** Each party to  
1003 this Agreement agrees that without unreasonable delay but not later than two (2)  
1004 business days after determining that a Breach occurred, the party responsible for the  
1005 Breach will Notify Vendor and all Participants likely impacted by the Breach of such  
1006 Breach. The notification should include sufficient information for the other notified  
1007 parties to understand the nature of the Breach. For instance, such notification could  
1008 include, to the extent available at the time of the notification, the following  
1009 information:

- 1010
- 1011 i. One or two sentence description of the Breach
  - 1012 ii. Description of the roles of the people involved in the Breach (e.g., employees,  
1013 Participant Users, service providers, unauthorized persons, etc.)
  - 1014 iii. The type of PHI Breached
  - 1015 iv. Participants likely impacted by the Breach
  - 1016 v. Number of Individuals or records impacted/estimated to be impacted by the  
1017 Breach
  - 1018 vi. Actions taken by the Participant to mitigate the Breach
  - 1019 vii. Current status of the Breach (under investigation or resolved)
  - 1020 viii. Corrective action taken and steps planned to be taken to prevent a similar  
1021 Breach.

1022

1023 The notifying party shall have a duty to supplement the information contained in the  
1024 notification as it becomes available and cooperate with other Participants and Vendor,  
1025 subject to Section 5(d)(v). The notification required by this Section shall not include  
1026 any PHI.

- 1027
- 1028 b. **Summary Notification to Non-Impacted Participants.** Vendor will Notify the  
1029 Participants of any Breach. Vendor will provide, in a timely manner, a summary to  
1030 such Participants that does not identify any of the Participants or Individuals involved  
1031 in the Breach.



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- c. **Proprietary Information.** Information provided by a Participant in accordance with this Section, except Health Data, may be “Proprietary Information.” Such “Proprietary Information” shall be treated in accordance with Section 11 (Proprietary Information).
  - d. **Legal Obligations.** This Section shall not be deemed to supersede or relieve a party’s obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law, including, but not limited to The HIPAA Breach Notification Rule, 45 CFR §§ 164.400-414 and Florida Statutes § 501.171, and those related to Individuals. The parties shall work together to coordinate any notification to Individuals, the federal government, and any public announcement regarding the Breach that may be required by Applicable Law or the policies of a party.
  - e. **Consumer Complaints.** Within two (2) business days of Vendor’s receipt of specific consumer complaints about privacy and security received from consumers, Vendor will refer all such consumer complaints to the appropriate Participant to investigate as a possible breach. At the same time that Vendor refers such consumer complaints to the appropriate Participant, but not earlier. Vendor shall maintain a record of the date the complaint was received, date of referral to the appropriate Participant, description of complaints, available contact information about the consumer, and Participant and Participant Users identified in the complaint.

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8. **Representations and Warranties.** The parties hereby represent and warrant the following as it applies to them respectively:

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- a. **Accurate Participant Information.** Except to the extent prohibited by Applicable Law, each Participant has provided, and will continue to provide Vendor with all information reasonably requested by Vendor necessary to discharge Vendor’s duties under this Agreement or Applicable Law, including during the Dispute Resolution Process. Any information provided by a Participant to Vendor shall be responsive and accurate, including any information provided by Participant during any registration process for a particular service; however, this representation shall not extend to any Health Data. Each Participant shall provide notice to Vendor if any information previously provided by the Participant (other than Health Data) materially changes. Each Participant acknowledges that Vendor reserves the right to confirm or otherwise verify or check, in its sole discretion, the completeness and accuracy of any registration or other information provided by Participant at any time and each Participant will reasonably cooperate with Vendor in such actions, given reasonable prior notice. Notwithstanding the foregoing, Vendor is entitled to rely on the accuracy of information provided by each Participant, and Vendor has no duty to confirm, verify, or check the completeness and accuracy of any information.
  - b. **Execution of this Agreement.** Prior to participating in the Network, each Participant shall have executed a Subscription Agreement and returned an executed copy to

1078 Vendor. In doing so, the Participant affirms that it has full power and authority to  
1079 enter into and perform this Agreement and has taken whatever measures necessary to  
1080 obtain all required approvals and consents in order for it to execute this Agreement.  
1081 The representative signing this Agreement on behalf of the Participant affirms that  
1082 he/she has been properly authorized and empowered to enter into this Agreement on  
1083 behalf of the Participant. Similarly, Vendor affirms that its representatives signing  
1084 this Agreement are duly authorized and that Vendor has full power and authority to  
1085 enter into and perform this Agreement.

- 1086
- 1087 c. **Agreements with Subcontractors.** To the extent that a Participant uses  
1088 subcontractors in connection with the Network or its use of Health Data obtained  
1089 from the Network, each Participant affirms that it has valid and enforceable  
1090 agreements with each of its subcontractors that require the subcontractor to, at a  
1091 minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of  
1092 any Health Data to which it has access; (iii) as soon as reasonably practicable after  
1093 determining that a Breach occurred, report such Breach to the Participant; and (iv)  
1094 reasonably cooperate with Vendor and the other Participants to this Agreement on  
1095 issues related to the Network, under the direction of Participant.
- 1096
- 1097 d. **Accuracy of Health Data and Authority to Transmit, Receive and/or Disclose (as**  
1098 **applicable).** Each Participant hereby represents that at the time of transmission, that  
1099 (i) the Health Data it provides pursuant to its Subscription Agreement is an accurate  
1100 representation of the data contained in or available through its System subject to the  
1101 limitations set forth in Section 9.d. of the General Terms and Conditions (Incomplete  
1102 Medical Record), (ii) the Health Data it provides is sent from a System that employs  
1103 security controls that meet industry standards so that the information and Health Data  
1104 being transmitted are intended to be free from malicious software in accordance with  
1105 Section 6.b. of the General Terms and Conditions (Enterprise Security, Malicious  
1106 Software), (iii) the Health Data it provides is provided in a timely manner and in  
1107 accordance with applicable Network Operating Policies and Technical Requirements,  
1108 (iv) that Participant is authorized to provide or make such Health Data available  
1109 through the Network under the terms of this Agreement without violating any rights,  
1110 including copyrights, of third parties, and (v) that Participant has met any  
1111 requirements under Applicable Law including but not limited to obtaining any  
1112 consent or authorization(s) from the Individual who is the subject of the Health Data,  
1113 or their legally authorized representative, if required, before making a request for  
1114 such Individual's Health Data through the Network. OTHER THAN THE  
1115 REPRESENTATIONS IN THIS PARAGRAPH, NEITHER VENDOR NOR  
1116 PARTICIPANT MAKE ANY OTHER REPRESENTATION, EXPRESS OR  
1117 IMPLIED, ABOUT THE HEALTH DATA. MORE SPECIFICALLY, THE  
1118 HEALTH DATA MADE AVAILABLE THROUGH THE NETWORK IS  
1119 PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF  
1120 ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO,  
1121 THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A  
1122 PARTICULAR PURPOSE, AND NONINFRINGEMENT. IT IS EXPRESSLY  
1123 AGREED THAT IN NO EVENT SHALL THE PARTICIPANT OR AHCA OR

VENDOR BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTICIPANT, AHCA AND/OR VENDOR HAS BEEN APPRISED OF THE POSSIBLITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTICIPANT AND VENDOR DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS, OR OTHER THIRD PARTIES OR DUE TO HARDWARE OR SOFTWARE FAILURES.

- e. **Absence of Final Orders.** Each party hereby represents and warrants that, as of the Effective Date, it is not subject to a final order issued by any Federal, State, local or international court of competent jurisdiction or regulatory or law enforcement organization, which will materially impact the party's ability to fulfill its obligations under this Agreement. Each party shall inform Vendor if at any point during its participation in the Network it becomes subject to such an order; Vendor will inform all Participants if a Participant informs Vendor that the Participant is subject to such an order.

9. **Disclaimers.**

- a. **Accuracy of Patient Record Matching.** Each Participant acknowledges that there could be errors or mismatches when matching patient identities between disparate data sources, but Vendor will take commercially reasonable measures to help ensure accurate patient matching occurs, if Vendor is involved in matching for the particular service to which Participant is subscribed. Participant is solely responsible for ensuring that any PHI obtained through the Network relates to a particular Individual as intended by the Participant and for the immediate destruction of any PHI obtained inadvertently.
- b. **Accuracy of Health Data.** Nothing in this Agreement shall be deemed to impose responsibility or liability on a Participant or on Vendor related to the clinical accuracy, content or completeness of any Health Data provided pursuant to this Agreement.
- c. **Reliance on a System.** Participants may not rely upon the availability of a particular Participant's Health Data, if such Health Data is provided as part of the particular service to which Participant is subscribed.
- d. **Incomplete Medical Record.** Each Participant acknowledges that Health Data may not include the Individual's full and complete medical record or history.

1169 e. **Use of Network in an Emergency.** Participant and Participant Users are responsible  
1170 for determining the appropriate use of the Network for communications or  
1171 transactions concerning or supporting treatment in an emergency or other urgent  
1172 situation. Further, to the extent that a Participant needs patient information in an  
1173 emergency or on an urgent basis, Participant and Participant Users retain sole  
1174 responsibility for communicating directly to any provider, including Participants  
1175 according to Participant’s own policies and procedures, and Participant agrees that it  
1176 will not rely upon the Network or Vendor for delivery of such messages or to obtain  
1177 patient information.

1178  
1179 f. **Patient Care.** Health Data obtained through the Network is not a substitute for any  
1180 Participant or Participant User, if that person/entity is a health care provider,  
1181 obtaining whatever information they deem necessary, in their professional judgment,  
1182 for the proper treatment of a patient. The Participant or Participant User, if they are a  
1183 health care provider, shall be responsible for all decisions and actions taken or not  
1184 taken involving patient care, utilization management, and quality management for  
1185 their respective patients and clients resulting from, or in any way related to, the use of  
1186 the Network or Health Data made available thereby. None of the Participants or  
1187 Vendor, by virtue of executing this Agreement, assumes any role in the care of any  
1188 patient.

1189  
1190 g. **Carrier Lines.** All Participants acknowledge that the exchange of Health Data  
1191 between Participants through the Network is to be provided over various facilities and  
1192 communications lines, and information shall be transmitted over local exchange and  
1193 Internet backbone carrier lines and through routers, switches, and other devices  
1194 (collectively, “carrier lines”) owned, maintained, and serviced by third-party carriers,  
1195 utilities, and Internet service providers, all of which may be beyond the Participants’  
1196 or Vendor’s control. Provided a Participant and Vendor use reasonable security  
1197 measures, no less stringent than those directives, instructions, and specifications  
1198 contained in this Agreement, the Participants and Vendor assume no liability for or  
1199 relating to the integrity, privacy, security, confidentiality, or use of any information  
1200 while it is transmitted over those carrier lines, which are beyond the Participants’ and  
1201 Vendor’s control, or any delay, failure, interruption, interception, loss, transmission,  
1202 or corruption of any Health Data or other information attributable to transmission  
1203 over those carrier lines which are beyond the Participants’ and Vendor’s control. Use  
1204 of the carrier lines is solely at the Participants’ and Vendor’s risk and is subject to all  
1205 Applicable Laws.

1206  
1207 10. **License to Common Network Resources.** Participant is hereby granted a nonexclusive,  
1208 nontransferable, revocable and limited license to Common Network Resources solely for use  
1209 as a Participant under this Agreement. Participant shall not (a) sell, sublicense, transfer,  
1210 exploit or, other than pursuant to this Agreement, use any Common Network Resources for  
1211 Participant’s own financial benefit or any commercial purpose, or (b) reverse engineer,  
1212 decompile, disassemble, or otherwise attempt to discover the source code to any Common  
1213 Network Resources. THE COMMON NETWORK RESOURCES ARE PROVIDED “AS  
1214 IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS

1215 OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF  
1216 MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND  
1217 NONINFRINGEMENT.  
1218

1219 11. **Proprietary Information**. Each Receiving Party shall hold Proprietary Information in  
1220 confidence and agrees that it shall not, during the term or after the termination of this  
1221 Agreement, redisclose to any person or entity, nor use for its own business or benefit, any  
1222 information obtained by it in connection with this Agreement, unless such use or redisclosure  
1223 is permitted by the terms of this Agreement. Proprietary Information may be redisclosed  
1224 under operation of law, provided that the Receiving Party immediately notifies the Discloser  
1225 of the existence, terms and circumstances surrounding such operation of law to allow the  
1226 Discloser its rights to object to such disclosure. If after Discloser's objection, the Receiving  
1227 Party is still required by law to redisclose Discloser's Proprietary Information, it shall do so  
1228 only to the minimum extent necessary to comply with the operation of the law and shall  
1229 request that the Proprietary Information be treated as such.  
1230

1231 12. **Business Associate Provisions**. This Section 12 shall only apply in the event that a  
1232 Participant is a Covered Entity. Vendor is hereby a Business Associate of any such Covered  
1233 Entity Participant and this Section 12 applies if and to the extent that Vendor meets the  
1234 definition of Business Associate with respect to such Covered Entity Participant.  
1235

1236 a. **Limits on Use and Disclosure.**  
1237

1238 i. **Use Under This Agreement.** Business Associate agrees to not use or further  
1239 disclose PHI other than as permitted or required by this Agreement or as  
1240 Required By Law. Business Associate may use and disclose PHI to perform  
1241 those functions, activities, or services that Business Associate performs for, or  
1242 on behalf of, each Covered Entity as specified in this Agreement, provided  
1243 that such use or disclosure would not violate HIPAA or HITECH if done by a  
1244 Covered Entity, including but not limited to accessing and transmitting PHI on  
1245 the Network and maintaining the Network, and making disclosures to  
1246 Participants for Permitted Purposes. Any such use or disclosure allowed by  
1247 this subsection shall be limited to those reasons and those individuals as  
1248 necessary to meet the Business Associate's obligations under this Agreement.  
1249

1250 ii. **Other Disclosures.** Business Associate will not make the following  
1251 disclosures that are otherwise allowed to be made by a Covered Entity under  
1252 45 CFR § 164.512 unless compelled to do so by law or unless such a  
1253 disclosure is specifically authorized or required by this Agreement:  
1254

- 1255 1. About victims or abuse, neglect, or domestic violence;
- 1256 2. For health oversight activities;
- 1257 3. For judicial and administrative proceedings;
- 1258 4. For law enforcement purposes;
- 1259 5. About decedents;
- 1260 6. For cadaveric organ, eye, or tissue donation purposes;

- 7. To avert a serious threat to health or safety;
- 8. For specialized government functions;
- 9. For workers' compensation purposes;
- 10. For marketing purposes;
- 11. For fundraising purposes.

If Business Associate is requested to make a disclosure for one of the foregoing reasons, it shall forward such request to the relevant Covered Entity so that the Covered Entity can coordinate and prepare a timely response.

Business Associate shall make PHI available to the Covered Entity for the foregoing reasons if requested to do so in writing by the Covered Entity for the Covered Entity to coordinate and prepare a timely response.

iii. **Use of PHI for Management and Administration or Legal Responsibilities of Business Associate.** Notwithstanding Section 12.a. of the General Terms and Conditions, Business Associate may use and disclose PHI received by the Covered Entity pursuant to this Agreement for: (1) the proper management and administration of the Business Associate; or (2) to carry out the legal responsibilities of the Business Associate. However, the Business Associate will only be allowed to disclose PHI for the aforementioned uses if: (1) the disclosure is Required By Law; or (2) the Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required By Law and for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances in which the person is aware of a confidentiality breach of PHI.

iv. **Data Aggregation Services.** With respect to PHI received by the Business Associate in its capacity as the Business Associate of the Covered Entity, Business Associate may combine such PHI it has received from the Covered Entity with the PHI received by the Business Associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the Health Care Operations of the respective Covered Entities, if data analyses is part of the services that Business Associate is to provide under this Agreement, as permitted by 45 CFR § 164.504(e)(2)(i)(B).

b. **Safeguards.** Business Associate agrees to use reasonable and appropriate administrative, physical and technological safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. In addition, Business Associate shall implement such safeguards and security measures as are necessary to comply with the HIPAA Security Rule as set forth in 45 CFR Parts 160 and Subparts A and C of Part 164. Business Associate shall provide periodic reports to AHCA related to the security measures implemented by Business Associate for the Network, including any material security incidents that have arisen since any prior report. Such report will also be made available to any Participant, upon request. A material security incident is one that results in unauthorized access, use, disclosure, modification, destruction of

1307 PHI, or interference with system operations. Security incidents that do not result in  
1308 such an outcome include, but are not limited to, pings on a firewall, attempts to log on  
1309 to a system with an invalid password or username, malware, and denial-of-service  
1310 attacks that do not result in a server being taken off-line. This Agreement constitutes  
1311 notice to the Covered Entity that such unsuccessful security incidents occur.  
1312

- 1313 c. **Report of Improper Use or Disclosure.** Business Associate agrees to promptly  
1314 report to a Covered Entity any use or disclosure of the Covered Entity's PHI not  
1315 provided for by this Agreement of which Business Associate becomes aware.  
1316 Business Associate is also subject to the requirements in Section 7 of the General  
1317 Terms and Conditions (Breach Notification).  
1318
- 1319 d. **Agents and Subcontractors.** Business Associate agrees to ensure that any agent,  
1320 including a subcontractor, to whom it provides PHI received from, or created or  
1321 received by the Business Associate on behalf of, a Covered Entity, agrees to the same  
1322 restrictions and conditions that apply through this Agreement to the Business  
1323 Associate with respect to PHI.  
1324
- 1325 e. **Access to Records To Fulfill Request by Individual.** Business Associate shall not  
1326 respond directly to requests from Individuals for access to their PHI in a Designated  
1327 Record Set. Business Associate will refer such Individuals to the relevant Covered  
1328 Entity so that the Covered Entity can coordinate and prepare a timely response to the  
1329 Individual.  
1330
- 1331 f. **Access to Records by HHS Secretary.** Business Associate shall make its records,  
1332 books, agreements and policies, and procedures relating to the administrative,  
1333 physical and technical safeguards and the use and disclosure of PHI received from, or  
1334 created or received by Business Associate on behalf of Covered Entity, available to  
1335 the HHS Secretary for purposes of determining Covered Entity's or Business  
1336 Associate's compliance with HIPAA and HITECH.  
1337
- 1338 g. **Amendments to PHI.** Business Associate shall have no obligation to initiate or make  
1339 PHI amendments to other Participants on the Network. Business Associate shall not  
1340 respond directly to requests from Individuals for amendments to their PHI. Business  
1341 Associate will refer such Individuals to the relevant Covered Entity so that the  
1342 Covered Entity can coordinate and prepare a timely response to the Individual.  
1343
- 1344 h. **Accounting of Disclosures.** See Section 2(f) of the General Terms and Conditions  
1345 for Business Associate's obligations regarding accounting of disclosures under 45  
1346 CFR § 164.528 and as amended by HITECH (Subtitle D Section 13405) and its  
1347 implementing regulations.  
1348
- 1349 i. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any  
1350 harmful effect that is known to Business Associate of a use or disclosure by Business  
1351 Associate in violation of the requirements of this Agreement.

1352 13. **Qualified Service Organization Provisions.** This Section 13 shall only apply in the event  
1353 that a Participant is or has a program subject to 42 CFR Part 2 (“Part 2”) or transmits Health  
1354 Data from or other data about clients in a program subject to 42 CFR Part 2.  
1355

1356 a. **Vendor’s Role.** Vendor is a Qualified Service Organization or QSO of Participant for  
1357 the purpose of providing the services specified in this Agreement for Participant,  
1358 which include but are not limited to data processing, holding and storing information  
1359 about Part 2 program clients, receiving and reviewing requests for disclosures to third  
1360 parties for Permitted Purposes under this Agreement, and/or facilitating the electronic  
1361 exchange of Part 2 clients’ information through the Network, as applicable for the  
1362 particular service to which Participant is subscribed.  
1363

1364 b. **Limits on Use and Disclosure.**  
1365

- 1366 i. The QSO shall only access Health Data or other data about clients of  
1367 Participant’s Part 2 program to the extent needed by the QSO to provide  
1368 services to the Part 2 program described in this Agreement.  
1369
- 1370 ii. The QSO agrees not to use or further disclose any Health Data or other Part 2  
1371 program client information other than as specified in this Agreement.  
1372
- 1373 iii. The QSO acknowledges that in receiving, storing, processing, or otherwise  
1374 using any information from the Part 2 program about the clients in the  
1375 program, it is fully bound by the provisions of the federal regulations  
1376 governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42  
1377 CFR Part 2.  
1378
- 1379 iv. The QSO undertakes to resist in judicial proceedings any effort to obtain  
1380 access to information pertaining to Part 2 program clients otherwise than as  
1381 expressly provided for in 42 CFR Part 2, and the QSO shall notify the  
1382 appropriate Participant.  
1383
- 1384 v. Any subcontractors or agents of the QSO may only access information from a  
1385 Part 2 program if the subcontractor or agent has entered into an agreement  
1386 with the QSO and has agreed to the same obligations stated in this Section 13,  
1387 including but not limited to being bound by 42 CFR Part 2.  
1388

1389 14. **Liability.**  
1390

1391 a. **Party Liability.** As between parties to this Agreement: Each party shall be  
1392 responsible for its own acts and omissions and not for the acts or omissions of any  
1393 other party. In circumstances involving harm to other parties caused by the acts or  
1394 omissions of individuals who access Health Data or Proprietary Information through  
1395 the Network or by use of any password, identifier, or log-on received or obtained  
1396 directly or indirectly, lawfully or unlawfully, from Vendor, the Participant or any of  
1397 the Participant Users, each party shall be responsible for such harm to the extent that



1398 the individual’s access was caused by the party’s breach of the Agreement or its  
1399 negligent conduct for which there is a civil remedy under Applicable Law.  
1400 Notwithstanding any provision in this Agreement to the contrary, the party shall not  
1401 be liable for any act or omission if a cause of action for such act or omission is  
1402 otherwise prohibited by Applicable Law. This section shall not be construed as a hold  
1403 harmless or indemnification provision. To the extent that a Participant is prohibited,  
1404 by Applicable Law, from being subject to the liability outlined in this Section 14(a)  
1405 (Party Liability), it shall be exempt from this Section 14(a)(Party Liability). If the  
1406 Participant is an agency of the State of Florida or otherwise enjoys sovereign  
1407 immunity (a “State Participant”), the limitations on tort claims as set forth in Section  
1408 768.28, Florida Statutes, shall apply to all tort-related claims, including without  
1409 limitations, all claims that the State Participant may be required to defend under the  
1410 indemnification provisions of this Agreement. The Parties to this Agreement  
1411 expressly agree that any State Participant’s execution of the Agreement, including  
1412 any indemnification obligations that may be contained in this Agreement, shall not  
1413 constitute a waiver of sovereign immunity, and that the entire extent of the State  
1414 Participant’s liability shall not exceed the limitations on tort claims set forth in  
1415 Section 768.28, Florida Statutes.  
1416

1417 b. **Effect of Agreement.** Except as provided in Section 8(d) (Representations and  
1418 Warranties, Accuracy of Health Data and Authority to Transmit) and Section 19  
1419 (Dispute Resolution) of the General Terms and Conditions, nothing in this Agreement  
1420 shall be construed to restrict AHCA’s, Vendor’s or a Participant’s right to pursue all  
1421 remedies available under Applicable Law for damages or other relief arising from  
1422 acts or omissions of other parties hereto related to the Network or this Agreement, or  
1423 to limit any rights, immunities or defenses to which a party may be entitled under  
1424 Applicable Law.  
1425

1426 c. **Limited Release of Vendor Liability.** Participants hereby release Vendor from any  
1427 claim arising out of any inaccuracy or incompleteness of Health Data or any delay in  
1428 the delivery of Health Data or failure to deliver Health Data to the Network when  
1429 requested except for those arising out of Vendor’s gross negligence.  
1430

1431 **15. Term, Suspension and Termination.**  
1432

1433 a. **Term.** Unless otherwise specified in the Subscription Agreement, the initial term of  
1434 this Agreement shall be for a period of two years commencing on the Effective Date.  
1435 Upon the expiration of the initial term, this Agreement shall automatically renew,  
1436 unless prohibited by law, for successive one-year terms unless terminated pursuant to  
1437 this Section 15 (Term, Suspension and Termination).  
1438

1439 b. **Suspension or Termination by Participant.**  
1440

1441 i. **Suspension.** A Participant may voluntarily suspend its own participation in  
1442 the particular service to which it is subscribed for a valid purpose, as  
1443 determined by Vendor, by giving Vendor at least twenty-four hours prior

1444 notice. Once proper notice is given, Vendor shall be empowered to suspend  
1445 the Participant's access as of the date of suspension specified in the notice.  
1446 Once Vendor suspends the Participant's access, Vendor shall provide notice  
1447 of such voluntary suspension to all Subscribing Participants. During the  
1448 suspension, neither the Participant, nor Participant Users, shall access the  
1449 Network or be responsible for complying with the terms of this Agreement  
1450 except those terms that survive termination of this Agreement in accordance  
1451 with Section 21(g) (Survival) of the General Terms and Conditions. Any  
1452 voluntary suspension shall be for no longer than five consecutive calendar  
1453 days or for more than twenty calendar days during any twelve month period,  
1454 unless a longer period is agreed to by Vendor.  
1455

1456 ii. **Termination.** A Participant may terminate its participation in a particular  
1457 service by terminating this Agreement, with or without cause, by giving  
1458 Vendor at least five business days prior notice. Once proper notice is given,  
1459 Vendor shall be empowered to revoke the Participant's access as of the date of  
1460 termination specified in the notice. If the Participant wishes to resume  
1461 participation, it will be required to execute a new Subscription Agreement,  
1462 including acceptance of the most recent version of the General Terms and  
1463 Conditions.  
1464

1465 c. **Suspension by the Vendor.** Upon Vendor completing a preliminary investigation  
1466 and determining that there is a substantial likelihood that a Participant's acts or  
1467 omissions create an immediate threat or will cause irreparable harm to another party,  
1468 including, but not limited to, a Participant, a Participant User, the Network, Vendor,  
1469 or an Individual whose PHI is exchanged through the Network, the Participants  
1470 hereby grant to Vendor, the power to summarily suspend, to the extent necessary to  
1471 address the threat posed by the Participant, a Participant's access to a particular  
1472 service, pending the submission and approval of a corrective action plan, as provided  
1473 in this Section. Vendor shall immediately suspend the Participant's access to a  
1474 particular service and within twelve hours of suspending Participant's access (i)  
1475 provide notice of such suspension to all Subscribing Participants; and (ii) provide to  
1476 the suspended Participant a written summary of the reasons for the suspension.  
1477 Participant shall use reasonable efforts to respond to the suspension notice with a  
1478 detailed plan of correction or an objection to the suspension within three business  
1479 days or, if such submission is not reasonably feasible within three business days, then  
1480 at the earliest practicable time. If the Participant submits a plan of correction, Vendor  
1481 will within five business days review and either accept or reject the plan of  
1482 correction. If the plan of correction is accepted, Vendor will, upon completion of the  
1483 plan of correction, reinstate Participant's access to the particular service and provide  
1484 notice to all Subscribing Participants of such reinstatement. If the plan of correction is  
1485 rejected, Participant's suspension will continue, during which time Vendor and  
1486 Participant shall work in good faith to develop a plan of correction that is acceptable  
1487 to both Participant and Vendor. At any time after Vendor rejects Participant's plan of  
1488 correction, either Participant or Vendor may submit a Dispute to the Dispute  
1489 Resolution Process described in Section 19 (Dispute Resolution) of the General

1490 Terms and Conditions. If Vendor and Participant cannot reach agreement on a plan of  
1491 correction through the Dispute Resolution Process, Vendor may terminate Participant  
1492 in accordance with Section 15(d) (Termination by the Vendor). Nothing in this  
1493 Agreement obligates Vendor to investigate or audit any Participant's compliance with  
1494 this Agreement or Applicable Law.

- 1495
- 1496 d. **Termination by Vendor.** Vendor may terminate a Participant's access to a particular  
1497 service and this Agreement with respect to a Participant as follows:
- 1498
- 1499 i. After taking a suspension action in accordance with Section 15(c) (Suspension  
1500 by Vendor) of the General Terms and Conditions when there is a substantial  
1501 likelihood that the Participant's acts or omissions create an immediate threat  
1502 or will cause irreparable harm to another party including, but not limited to, a  
1503 Participant, a Participant User, the Network, Vendor, AHCA, or an Individual  
1504 whose PHI is exchanged through the Network;
  - 1505
  - 1506 ii. In the event that the Participant has materially breached this Agreement and  
1507 has not cured such material breach after ten business days' notice that includes  
1508 a detailed description of the alleged material breach; or
  - 1509
  - 1510 iii. Immediately in the event that the Participant violates this Agreement's  
1511 provisions regarding protection of Vendor's Proprietary Information.
  - 1512

1513 A Participant whose access is revoked by virtue of termination may appeal such  
1514 revocation through the Dispute Resolution Process. However, during the pendency of  
1515 any such appeal, the Participant's access to the particular service may continue to be  
1516 revoked at the discretion of Vendor.

- 1517
- 1518 e. **Effect of Termination.** Upon any termination of this Agreement for any reason, the  
1519 terminated party shall cease to be a Participant and thereupon and thereafter neither  
1520 that party nor its Participant Users shall have any rights to use the Network (unless  
1521 such Participant Users have an independent right to access the Network through  
1522 another Participant). Vendor shall revoke a terminated Participant's access to  
1523 particular service and provide notice of such Participant's access to the remaining  
1524 Subscribing Participants. As an exception to the foregoing, termination of a  
1525 Participant for one subscribed service would not necessarily terminate Participant  
1526 from another subscribed service, if Participant had subscribed to more than one  
1527 service on the Network. In the event that any Participant(s) are terminated, this  
1528 Agreement will remain in full force and effect with respect to all other Subscribing  
1529 Participants. Certain provisions of this Agreement survive termination, as more fully  
1530 described in Section 21(g) (Survival).
- 1531
- 1532 f. **Disposition of Health Data Upon Termination.** At the time of termination,  
1533 Recipient (other than Vendor) may, at its election, retain Health Data on Recipient's  
1534 System (if applicable) in accordance with the Recipient's document and data  
1535 retention policies and procedures, Applicable Law, and this Agreement, including

1536 Section 3(c) (Permitted Future Uses (Re-Disclosure)) of the General Terms and  
1537 Conditions. Vendor shall terminate access to or from a terminated Participant’s  
1538 system on the termination date for that Participant. Vendor will delete or destroy a  
1539 terminated Participant’s data, including but not limited to any Health Data; however,  
1540 if Vendor determines that returning or destroying PHI is not feasible, then Vendor  
1541 must maintain the privacy protections under the Business Associate, Qualified  
1542 Services Organization and other provisions of this Agreement relating to protection of  
1543 Health Data and according to Applicable Law for as long as Vendor retains the PHI,  
1544 and Vendor may only use or disclose the PHI for the specific uses or disclosures that  
1545 make it necessary for Vendor to retain the PHI. If Vendor determines that it is  
1546 infeasible for Vendor to obtain PHI in its subcontractor or agent’s possession, Vendor  
1547 must provide a written explanation to the terminated Participant of such reasons and  
1548 require its subcontractors and agents to agree to extend any and all protections,  
1549 limitations and restrictions contained in this Agreement to its subcontractors or  
1550 agents’ use or disclosure of any PHI retained after the termination of this Agreement,  
1551 and to limit any further uses or disclosures for the purposes that make the return or  
1552 destruction of the PHI infeasible. Vendor may retain audit trail data for a terminated  
1553 Participant for a period of time for legal defense purposes in accordance with the  
1554 document and data retention policies stated in the applicable Network Operating  
1555 Policies and Technical Requirements  
1556

1557 **16. Insurance.**  
1558

- 1559 a. **Insurance by Vendor.** Vendor shall maintain Workers Compensation insurance and  
1560 Commercial General Liability insurance including bodily injury, property damage,  
1561 personal and advertising injury and products and completed operations. This  
1562 insurance will provide coverage for all claims that may rise from the services and/or  
1563 operations completed under this Agreement, whether such services and/or operations  
1564 are by Vendor or anyone directly employed or engaged by it (including, but not  
1565 limited to, its subcontractors). Vendor will maintain professional liability insurance  
1566 coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate  
1567 covering all acts, errors, omissions, negligence, infringement of intellectual property  
1568 (except patent and trade secret) and network risks (including coverage for  
1569 unauthorized access, failure of security, breach of privacy perils, as well as  
1570 notification costs and regulatory defense) in the performance of its services. Vendor  
1571 reserves the right to self-insure any of the required coverages in this section, provided  
1572 that such self-insurance meets all regulatory requirements.  
1573
- 1574 b. **Insurance by Participants.** Each Participant shall carry insurance in an amount  
1575 sufficient to cover its obligations hereunder; however, each Participant reserves the  
1576 right to self-insure to meet the obligation of coverage in this section, provided that  
1577 such self-insurance meets all regulatory requirements.  
1578

1579 **17. Indemnification.**

- 1580 a. **Indemnification by Participants.** Participant will indemnify and hold harmless  
1581 Vendor and other Participants, their employees and agents for any actual damages,  
1582 reasonable expenses and costs, including reasonable attorneys’ fees, from claims by  
1583 third parties arising directly from Participant’s or Participant’s Users’ breach of this  
1584 Agreement, including the unauthorized or improper use of the Network or  
1585 Participant’s or Participant’s Users’ use or disclosure of Health Data for any purpose  
1586 other than a Permitted Purpose. The Participant will not be liable for indirect, special,  
1587 exemplary, consequential or punitive damages (including, but not limited to, loss of  
1588 profits). The foregoing indemnity shall apply only to the extent of the willful  
1589 misconduct or gross negligence of the Participant or Participant User.  
1590
- 1591 b. **Indemnification by Vendor.**
- 1592
- 1593 i. **For Breach.** Vendor will indemnify and hold harmless Participants,  
1594 Participant Users, their employees and agents for any actual damages,  
1595 reasonable expenses and costs, including reasonable attorneys’ fees, from  
1596 claims by third parties arising directly from Vendor’s breach of this  
1597 Agreement, including the unauthorized or improper use of the Network or  
1598 Vendor’s use or disclosure of Health Data for any purpose other than a  
1599 Permitted Purpose or as otherwise allowed under this Agreement. Vendor  
1600 shall not be liable for indirect, special, exemplary, consequential or punitive  
1601 damages (including, but not limited to, loss of profits). The foregoing  
1602 indemnity shall apply only to the extent of the willful misconduct or gross  
1603 negligence of Vendor.  
1604
- 1605 ii. **For Infringement.** Vendor will indemnify and hold harmless Participants,  
1606 Participant Users, their employees and agents for any actual damages,  
1607 reasonable expenses and costs, including reasonable attorneys’ fees, from  
1608 claims by third parties that the use of the Network or any Common Network  
1609 Resource or software provided by Vendor infringes any patents, copyrights or  
1610 trademarks or is a misappropriation of trade secrets, provided that Participant  
1611 notifies Vendor in writing promptly upon discovery of any such claims and  
1612 gives Vendor complete authority and control of, and full cooperation with, the  
1613 defense and settlement of such claim. Vendor shall not be liable for indirect,  
1614 special, exemplary, consequential or punitive damages (including, but not  
1615 limited to, loss of profits).  
1616
- 1617 c. **Indemnification in General.** In the event a suit is brought against a party to this  
1618 Agreement under circumstances where Section 17(a) (Indemnification by  
1619 Participants) or 17(b) (Indemnification by Vendor) of the General Terms and  
1620 Conditions applies (the “sued party”), the indemnifying party, at its sole cost and  
1621 expense, shall defend the sued party in such suit if written notice thereof is promptly  
1622 given to the indemnifying party within a period wherein the indemnifying party is not  
1623 prejudiced by lack of such notice. If indemnifying party is required to indemnify and  
1624 defend, it will thereafter have control of such litigation, but the indemnifying party  
1625 may not enter into any settlement or other agreement with respect to any claim that

1626 imposes any duty or obligation on the sued party, or provides for an admission of  
1627 fault on the part of the sued party, without the prior written consent of the sued party,  
1628 which consent shall not be unreasonably withheld. This Section is not, as to third  
1629 parties, a waiver of any defense or immunity otherwise available to the sued party;  
1630 and the indemnifying party, in defending any action on behalf of the sued party, shall  
1631 be entitled to assert in any action every defense or immunity that the sued party could  
1632 assert in its own behalf. This indemnification not only applies to civil suits filed  
1633 against the sued party, but also to administrative actions and civil penalties on the  
1634 sued party imposed by state or federal government agencies that may result from  
1635 breach of this Agreement by the indemnifying party. Any action or claim against the  
1636 indemnifying party must be brought in writing within one (1) year from the date of  
1637 filing of the claim by the third party against the sued party, otherwise the indemnity is  
1638 invalid.

- 1639
- 1640 d. **Exception for Certain Participants.** The obligation to indemnify in this Section 17  
1641 (Indemnification) shall not apply to any Participant who is barred by statute or other  
1642 Applicable Law from indemnifying another party. In the case of a State Participant,  
1643 the provisions of Section 768.28, Florida Statutes, relating to sovereign immunity  
1644 shall govern. In addition, a State Participant’s indemnification obligations shall be no  
1645 greater than the limitations on tort claims as set forth in Section 768.28, Florida  
1646 Statutes, and treated as if the tort claims prompting Vendor or other Participants to  
1647 invoke the indemnification obligation had been asserted against the State Participant  
1648 directly. In the event that any third parties asserts claims against the State Participant  
1649 and Vendor and/or other Participants, the State Participant’s aggregate obligations  
1650 shall not exceed the limitations on tort claims as set forth in Section 768.28, Florida  
1651 Statutes. Nothing in this Agreement shall be construed as a waiver of sovereign  
1652 immunity or consent by a state agency or political subdivision to suit by third parties.  
1653

1654 18. **General Fee Terms for Services.** Any fees payable for service(s) offered are provided in  
1655 the applicable Subscription Agreement, as amended from time to time by Vendor. Unless  
1656 expressly modified in the Subscription Agreement, the following terms apply to payment of  
1657 fees.  
1658

- 1659 a. **Taxes.** All fees and other charges for subscribing to a particular service shall be  
1660 exclusive of all federal, state, municipal, or other government excise, sales, use,  
1661 occupational, or like taxes now in force or enacted in the future, and the Participant  
1662 shall pay any tax (excluding taxes on Vendor’s net income) that Vendor may be  
1663 required to collect or pay now or at any time in the future and that are imposed upon  
1664 the sale or delivery of items or services provided pursuant to this Agreement.  
1665
- 1666 b. **Third Party Fees and Charges.** The Participant will be solely responsible for any other  
1667 charges or expenses the Participant may incur to access or use the service, including  
1668 without limitation, Carrier Line and equipment charges, and fees charged by vendors  
1669 of third party products that may be included and specified in a Subscription  
1670 Agreement to which Participant has executed.

1671 c. Failure to Pay Fees.  
1672

- 1673 i. Interest on Late Payments. Fees not paid for the service by the due date set in  
1674 the Subscription Agreement(s) executed by Participant may bear interest at the  
1675 rate of one and a half percent (1.5%) per month or the highest legal rate of  
1676 interest, whichever is lower. The accrual of such interest shall not affect the  
1677 rights and remedies of Vendor under this Agreement.  
1678
- 1679 ii. Suspension of Service. In the event fees are not paid by thirty (30) days  
1680 following the due date (or, in the event the Participant disputes any portion of  
1681 the fees due), Vendor may suspend the Participant's access to a service on  
1682 thirty (30) days' prior notice. Vendor may charge a reasonable renewal fee to  
1683 cover its costs and overhead associated with restoring a suspended service  
1684 after suspension due to non-payment.  
1685
- 1686 iii. Collection. In the event that payment due to Vendor is collected at law or  
1687 through an attorney-at-law, or under advice therefrom, or through a collection  
1688 agency, Participant agrees to pay all costs of collection, including without  
1689 limitation all court costs and reasonable attorneys' fees.  
1690

1691 **19. Dispute Resolution.**  
1692

- 1693 a. **General.** The parties acknowledge that it may be in their best interest to resolve  
1694 Disputes through an alternative dispute resolution process rather than through civil  
1695 litigation. The parties have reached this conclusion based upon the fact that the legal  
1696 and factual issues involved in this Agreement are unique, novel, and complex, and  
1697 limited case law exists which addresses the legal issues that could arise from this  
1698 Agreement. Therefore, the parties shall submit Disputes related to this Agreement to  
1699 the Dispute Resolution Process in the next Section 19(b). Except in accordance with  
1700 Section 19(c) (Immediate Injunctive Relief) of the General Terms and Conditions, if a  
1701 party refuses to participate in the Dispute Resolution Process, such refusal shall  
1702 constitute a material breach of this Agreement and shall be grounds for termination.  
1703

1704 b. **Dispute Resolution Process:**  
1705

- 1706 i. Notice of Dispute. When a Dispute arises, a party will send Notice, in  
1707 accordance with the notice provision of the Agreement, to the other parties to  
1708 this Agreement involved in the Dispute. The Notice must contain a summary  
1709 of the issue as well as a recommendation for resolution. The party must send a  
1710 copy of the Notice to Vendor and AHCA for informational purposes.  
1711
- 1712 ii. Informal Conference. Within thirty calendar days of receiving the Notice, the  
1713 parties involved in the Dispute are obligated to meet and confer with each  
1714 other, at least once in good faith and at a mutually agreeable location (or by  
1715 telephone), to try to reach resolution (the "Informal Conference"). If the  
1716 parties to the Dispute reach a resolution at the Informal Conference, they will

1717 provide notification to that effect to Vendor. The parties agree that if any party  
1718 refuses to participate in such Informal Conference, or if the Informal  
1719 Conference fails to produce a mutually acceptable resolution of the Dispute  
1720 within thirty (30) calendar days after the parties' receipt of Notice of the  
1721 Dispute, the other party or parties may submit the matter to mediation or  
1722 arbitration pursuant to this Section 19(b).

1723  
1724 iii. Mediation. In the event a Dispute arises between or among the parties that  
1725 cannot be settled by Informal Conference as set forth above, the parties may,  
1726 on mutual agreement, submit the matter to mediation to be conducted in a  
1727 mutually agreeable location in Florida. The process for selecting the mediator  
1728 shall be determined by the mutual written consent of the parties. If the parties  
1729 fail to agree to a process within ten (10) calendar days from a request, the  
1730 requesting party may proceed to invoke the arbitration process provided for  
1731 herein. The consent of any party to such mediation may be withdrawn at any  
1732 time, without cause. If the parties to the Dispute reach a resolution at the  
1733 mediation, they will provide notification to that effect to Vendor.

1734  
1735 iv. Binding Arbitration. The parties agree that any Dispute which cannot be  
1736 resolved between or among them after following the Dispute Resolution  
1737 Process set forth in this Section shall be subject to mandatory and binding  
1738 arbitration before a single arbitrator. The arbitration shall be conducted by and  
1739 according to the American Health Lawyers' Association's Alternative Dispute  
1740 Resolution Service ("AHLA – ADR") Rules of Procedure for Arbitration, and  
1741 judgment on the award by the arbitrator may be entered in any court having  
1742 jurisdiction thereof. The arbitration shall be held in such location as mutually  
1743 agreed upon by the parties; provided, if the parties fail to agree within ten  
1744 days of the request for arbitration, the location shall be determined by the  
1745 arbitrator. Each party involved shall be responsible for the costs and fees of its  
1746 attorneys, accountants, consultants and other costs incurred in the preparation  
1747 and presentation of its position at arbitration. The parties to the Dispute shall  
1748 bear equally the cost of the arbitrator and those costs common to multiple  
1749 parties. In the event the prevailing party is required to seek enforcement of  
1750 any arbitrator's decision in a court of competent jurisdiction, the party  
1751 ultimately prevailing in any appeal thereof shall have the costs and fees of its  
1752 attorneys, accountants, and other consultants incurred in prosecuting such  
1753 appeal and post judgment collection costs paid by the non-prevailing party or  
1754 parties. If the arbitrator requires the assistance of a financial or accounting  
1755 expert to carry out his duties under this Section, then the parties to the Dispute  
1756 shall have the equal obligation to pay for such experts.

1757  
1758 c. **Immediate Injunctive Relief**. Notwithstanding the prior Section, a party may be  
1759 relieved of its obligation to participate in the Dispute Resolution Process if such party  
1760 (i) believes that another party's acts or omissions create an immediate threat to the  
1761 confidentiality, privacy or security of Health Data exchanged through the Network or  
1762 will cause irreparable harm to the Network or another party (Participant, Participant



1763 User, Vendor, or Individual) and (ii) pursues immediate injunctive relief against such  
1764 other party in a court of competent jurisdiction. The party pursuing immediate  
1765 injunctive relief must notify Vendor of such action within twenty-four hours of filing  
1766 for the injunctive relief and of the result of the action within twenty-four hours of  
1767 learning of the same. If the injunctive relief sought is not granted and the party  
1768 seeking such relief chooses to pursue the Dispute, the parties must then submit to the  
1769 Dispute Resolution Process.

1770  
1771 d. **Activities During the Dispute Resolution Process.** Pending resolution of any  
1772 Dispute under this Agreement, the parties agree to fulfill their responsibilities in  
1773 accordance with this Agreement, unless the party is a Participant and voluntarily  
1774 suspends its participation in the Network in accordance with Section 15(b)  
1775 (Suspension or Termination by Participant) of the General Terms and Conditions, or  
1776 is suspended in accordance with Section 15(c) (Suspension by Vendor) of the General  
1777 Terms and Conditions.

1778  
1779 e. **Implementation of Agreed Upon Resolution.** If, at any point during the Dispute  
1780 Resolution Process, all of the parties to the Dispute accept a proposed resolution of  
1781 the Dispute, the parties agree to implement the terms of the resolution in the agreed  
1782 upon timeframe.

1783  
1784 f. **Exceptions for Certain Participants.** The obligation to engage in binding arbitration  
1785 in this Section 19 (Dispute Resolution) shall not apply to any Participant who is  
1786 barred by statute or other Applicable Law from engaging in binding arbitration with  
1787 another party. Binding arbitration pursuant to this Section shall not apply to the  
1788 rights of action involving the state or its agencies or subdivisions or the officers,  
1789 employees, or agents thereof pursuant to Section 768.28. If the Participant is an  
1790 agency of the State of Florida, the provisions of Section 768.28, Florida Statutes,  
1791 relating to sovereign immunity shall govern.

1792  
1793 20. **Notices.** All Notices to be made under this Agreement shall be given in writing to the  
1794 appropriate party's representative at the address listed in the Subscription Agreement, and  
1795 shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated  
1796 on the return receipt, when sent by U.S. Postal Service Certified Mail, return receipt  
1797 requested; or (iii) if by transmission nationally recognized overnight courier service that has  
1798 the capability to track the notice, upon receipt.

1799  
1800 21. **Miscellaneous/General.**  
1801

1802 a. **Governing Law.** In the event of a Dispute between or among the parties arising out  
1803 of this Agreement, Florida law will govern the operation of the parties involved in the  
1804 Dispute, excluding its conflicts of law rules.

1805  
1806 b. **Changes to Applicable Law.** Any new legislation or amendments to government  
1807 regulations or administrative rules that become effective after the Effective Date of  
1808 this Agreement shall be mutually agreed to by AHCA, Vendor, and Participants as to

1809 the applicability of the change to this Agreement. Upon mutual agreement of the  
1810 parties, a written amendment will subsequently be made to this Agreement to  
1811 incorporate the requisite change(s).  
1812

- 1813 c. **Entire Agreement.** This Agreement sets forth the entire and only agreement among  
1814 Vendor and the Participants relative to the subject matter hereof and supersedes all  
1815 previous negotiations and agreements, whether oral or written. Any representation,  
1816 promise, or condition, whether oral or written, not incorporated herein, shall not be  
1817 binding upon Vendor or any Participant.  
1818
- 1819 d. **Amendment.** Except for changes to any fees charged by Vendor in the Subscription  
1820 Agreement (if any), and changes to Network Operating Policies and Technical  
1821 Requirements for the particular service, made in accordance with Section 4 (Network  
1822 Operating Policies and Technical Requirements) of the General Terms and  
1823 Conditions, this Agreement may be amended only by an instrument in writing signed  
1824 by the party against whom the change, waiver, modification, extension, or discharge  
1825 is sought, unless otherwise indicated in this Agreement.  
1826
- 1827 e. **Assignment.** No party shall assign or transfer this Agreement, or any part thereof,  
1828 without the express written consent of Vendor. Any assignment that does not comply  
1829 with the requirements of this Section shall be void and have no binding effect.  
1830
- 1831 f. **Additional Participants.** Upon Vendor's acceptance of a new participant in the  
1832 Network, Vendor will coordinate for the new Participant to execute and become  
1833 bound by this Agreement. To accomplish this, the new participant will enter into a  
1834 Subscription Agreement, pursuant to which the new participant agrees to be bound by  
1835 this Agreement. The Participants and Vendor agree that upon execution of the  
1836 Subscription Agreement by a duly authorized representative of Vendor, all then-  
1837 current Participants shall be deemed to be signatories to such Subscription Agreement  
1838 with the result being that current Participants and the new participant are all bound by  
1839 the Agreement and obligated to each other in accordance with its terms. The new  
1840 participant shall not be granted the right to participate in the particular service until  
1841 both it and Vendor execute the Subscription Agreement.  
1842
- 1843 g. **Survival.** The provisions of Sections 3(c) (Permitted Future Uses (Re-Disclosure)),  
1844 3(d) (Management Uses), 7 (Breach Notification), 11 (Proprietary Information), 14  
1845 (Liability), 15(g) (Disposition of Health Data Upon Termination), 17  
1846 (Indemnification), 19 (Dispute Resolution) and any other provisions of this  
1847 Agreement that by their nature or by express statement shall survive, shall survive the  
1848 termination of this Agreement for any reason. In addition, any Participant obligation  
1849 to pay fees to Vendor shall survive termination of this Agreement and the terms of  
1850 Section 18 (General Fee Terms for Service) of the General Terms and Conditions  
1851 shall survive and apply, as needed.

- 1852 h. **Waiver.** No failure or delay by any party in exercising its rights under this  
1853 Agreement shall operate as a waiver of such rights, and no waiver of any right shall  
1854 constitute a waiver of any prior, concurrent, or subsequent right.  
1855
- 1856 i. **Validity of Provisions.** In the event that a court of competent jurisdiction shall hold  
1857 any Section, or any part or portion of any Section of this Agreement, invalid, void or  
1858 otherwise unenforceable, each and every remaining Section or part or portion thereof  
1859 shall remain in full force and effect, as long as the original intent of the Agreement  
1860 would not thereby be frustrated.  
1861
- 1862 j. **Priority.** In the event of any conflict or inconsistency between a provision in the  
1863 General Terms and Conditions of this Agreement and the body of the Subscription  
1864 Agreement, the terms contained in the body of the Subscription Agreement shall  
1865 prevail.  
1866
- 1867 k. **Headings.** The headings throughout this Agreement are for reference purposes only,  
1868 and the words contained therein may in no way be held to explain, modify, amplify,  
1869 or aid in the interpretation or construction of meaning of the provisions of this  
1870 Agreement. All references in this instrument to designated “Sections” and other  
1871 subdivisions are to the designated Sections and other subdivisions of this Agreement.  
1872 The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to  
1873 this Agreement as a whole and not to any particular Section or other subdivision.  
1874
- 1875 l. **Relationship of the Parties.** The parties are independent contracting entities.  
1876 Nothing in this Agreement shall be construed to create a partnership, agency  
1877 relationship, or joint venture among the parties. No party hereto shall have any  
1878 authority to bind or make commitments on behalf of one another, nor shall any such  
1879 party hold itself out as having such authority. No party to this Agreement shall be  
1880 held liable for the acts or omissions of another party hereto.  
1881
- 1882 m. **Third-Party Beneficiaries.** With the exception of the parties to this Agreement, there  
1883 shall exist no right of any person to claim a beneficial interest in this Agreement or  
1884 any rights occurring by virtue of this Agreement.  
1885
- 1886 n. **Counterparts.** This Agreement may be executed in any number of counterparts, each  
1887 of which shall be deemed an original as against the Participant whose signature  
1888 appears thereon, but all of which taken together shall constitute but one and the same  
1889 instrument.  
1890
- 1891 o. **Force Majeure.** A party shall not be deemed in violation of any provision of this  
1892 Agreement if it is prevented from performing any of its obligations by reason of: (i)  
1893 severe weather or storms; (ii) earthquakes or other disruptive natural occurrences; (iii)  
1894 strikes or other labor unrest; (iv) power failures; (v) nuclear or other civil or military  
1895 emergencies; (vi) terrorist attacks; (vii) acts of legislative, judicial, executive, or  
1896 administrative authorities; or (viii) any other circumstances that are not within its

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1897 reasonable control. This Section shall not apply to obligations imposed under  
1898 Applicable Law.

1899  
1900 p. **Time Periods.** Any of the time periods specified in this Agreement may be changed  
1901 pursuant to the mutual written consent of Vendor and the affected party(ies).



# Public Comments



# Meeting Summary



# New Action Items



**Adjournment**