

**HEALTHCONNECTIONS AGREEMENT FOR DISCLOSURE OF DATA WITH VENDOR OF PARTICIPANT(S)**

THIS AGREEMENT FOR DISCLOSURE OF DATA TO PARTICIPANTS' VENDOR ("HADV" or "Agreement") is made and entered into as of \_\_\_\_\_ ("Effective Date"), by and among the HEALTH ADVANCEMENT COLLABORATIVE OF CENTRAL NEW YORK, INC., a New York not-for-profit corporation d/b/a HealthConnections ("HealthConnections" or "HeC"), and the VENDOR identified on the Signature Page (the "Vendor").

**RECITALS**

WHEREAS, HealthConnections operates a health information exchange ("HIE") pursuant to: (i) certain participation agreements between HealthConnections and its participants, or (ii) a service provider agreement between HealthConnections and another New York State HIE ("Service Provider Agreement") whereby such other HIE has participation agreements with its participants (the "Participation Agreement") (Each party signing a Participation Agreement pursuant to (i) and (ii) is referred to as a "Participant".);

WHEREAS, HeC is either a Business Associate of Participants or a Subcontractor Business Associate of Participants under a Service Provider Agreement;

WHEREAS, from time to time Vendor may have one or more Participants as customers;

WHEREAS, Vendor has executed a Business Associate Agreement with Participants who are customers of Vendor;

WHEREAS, Vendor and HeC have executed the attached Reciprocal Business Associate Agreement; and

WHEREAS, Participant has authorized HealthConnections to assist Participant with facilitating transfers of Patient Data (defined below) to and from its Vendor, subject to the applicable provisions of the Participation Agreement ("Authorization").

NOW THEREFORE, IN CONSIDERATION of the recitals, covenants, and promises herein contained, and for other valuable consideration, the parties agree as follows:

**1. DEFINITIONS**

- 1.1 "Business Associate"** shall have the same meaning as defined by HIPAA.
- 1.2 "HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and its implementing regulations set forth at 45 CFR Parts 160 and 164.
- 1.3 "Patient Data"** shall have the same meaning as defined in the Participation Agreement.

**2. TERM AND TERMINATION**

The term of this Agreement shall commence on the Effective Date, and shall continue until terminated. Either party may terminate this Agreement at any time, for any reason, by giving not less than thirty (30) days' prior notice to the other party. As to each Participant, this Agreement shall automatically terminate

upon the termination of the Participation Agreement, the Service Provider Agreement, termination of the Authorization, and/or termination of the customer agreement between Vendor and Participant.

### **3. SERVICES**

HealtheConnections and Vendor shall facilitate the electronic transmission of Patient Data between HeC and Vendor on behalf of Participant, in accordance with the terms of this Agreement (“Services”). The Services shall be performed in a timely and professional manner and consistent with applicable federal and state laws and regulations.

### **4. REPRESENTATIONS AND RESPONSIBILITIES**

**4.1** HeC and Vendor shall each limit its use of any information, including Patient Data, received pursuant to this Agreement, to lawful use, as necessary to carry out its assigned roles and responsibilities as a Business Associate of Participant. As used in this section, “lawful use” means: (i) use for Treatment, Payment or Health Care Operations (as those terms are defined in HIPAA); or (ii) any other use that is permitted or required under HIPAA, the Privacy and Security Policies and Procedures for Qualified Entities and Their Participants in New York State under 10 NYCRR § 300.3(b)(1) (“SHIN-NY Policies”), and other applicable law governing the use and disclosure of Patient Data.

**4.2** Vendor shall, upon request, provide HeC a copy of the Business Associate Agreement between Vendor and Participant, and shall at all times comply with such Business Associate Agreement.

**4.3** Vendor and HeC will be bound by the Reciprocal Business Associate Agreement attached to this Agreement as Attachment 1 and incorporated by reference and the General Terms and Conditions for integration with and/or access to HeC’s system attached to this Agreement as Attachment 2 and incorporated by referenced.

**4.4** Vendor shall provide HealtheConnections all information necessary to enable HealtheConnections to electronically transmit Patient Data that a Participant authorizes to have HealtheConnections transmit to Vendor, and shall upon request from time to time, verify that it is only sharing data for Participants that are then current customers of Vendor.

**4.5** HeC and Vendor acknowledge that, in all cases, each will comply with federal and State laws and regulations requiring patient consent for the disclosure and re-disclosure of Protected Health Information (as that term is defined under HIPAA).

**4.6** (i) Each party has the full right and title to its licensed software products included in or required to perform the Services and all related intellectual property as may now or in the future exist, or full rights to license its software products included in or required for use of the its system and all related intellectual property for use under the terms of this Agreement.

(ii) Each party has the required authorization to enter this Agreement and is sufficiently staffed and equipped to fulfill its obligations hereunder.

### **5. FEES.**

Fees, if any, related to this Agreement, will be set forth in a services agreement supplement between the parties.

**Signature Page Follows**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date set forth above.

**Health Advancement Collaborative of Central New York, Inc. d/b/a HealtheConnections**

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

Name: Robert J. Hack

Title: President and CEO

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

Address for purposes of notice:

Health Advancement Collaborative of Central New York, Inc. d/b/a HealtheConnections

Franklin Center

Suite 001

443 North Franklin Street

Syracuse, NY 13204

Attention: President and CEO

Electronic mail: rhack@healtheconnections.org

Facsimile: (315) 407-0053

**Business Associate of Participant(s)/Vendor:**

Entity Name:

\_\_\_\_\_

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

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

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

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

Address for purposes of notice:

**Attachment 1**  
**Reciprocal Business Associate Agreement**

This Business Associate Agreement (“BAA”) applies to the extent (and does not expand the extent) the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations codified at 45 C.F.R. parts 160-164, as may be amended from time to time (the “Privacy and Security Rules”) and the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated pursuant to such Act, including the Omnibus Rule effective September 23, 2013, as may be amended from time to time (“HITECH”) (HIPAA, the Privacy and Security Rules, HITECH and the Omnibus Rule together are the “HIPAA Rules”) apply to HealtheConnections and Vendor (each a “Party” and together, the “Parties”), or if either Party receives from the other Party Medicaid Confidential Data (MCD). Capitalized terms not defined herein have the meaning set forth in the HADV to which this is attached.

**WHEREAS**, HealtheConnections is a regional health information organization (“RHIO”) that operates a health information exchange and record locator service to assist public and private health care providers, payers, and other health related organizations (the “Participants”) in locating and sharing patient information; and

**WHEREAS**, Vendor is involved in health-related services; and

**WHEREAS**, the Parties possess individually identifiable health information, which is subject to the HIPAA Rules, and/or MCD (defined below) and may exchange individually identifiable health information between one another, the flow of information being in both directions depending on the circumstances;

**WHEREAS**, depending on the flow of information, either Party may accordingly be referred to herein as “Beneficiary” (the Party sharing the information) and the other Party as “Business Associate” (the Party receiving the information);

**WHEREAS**, when a Party is acting as a Beneficiary it seeks to require the Business Associate to appropriately safeguard individually identifiable health information;

**WHEREAS**, the Party acting as the Business Associate agrees to comply with all obligations imposed upon Business Associates under the HIPAA Rules; and

**WHEREAS**, the Parties desire to enter into this BAA in order to comply with the HIPAA Rules.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Parties hereto agree as follows:

1. **Definitions.** Unless otherwise defined in this BAA, any and all capitalized terms used in this BAA have the meanings ascribed to them in the HIPAA Rules or the Underlying Contract (defined below). For convenience, certain definitions are set forth below.

a. “Breach” has the same meaning as the term “Breach”, as defined in 45 C.F.R. § 164.402.

b. “Business Associate” has the same meaning as the term “Business Associate”, as defined in 45 C.F.R. § 160.103.

c. “Data Aggregation Services” means the combining of PHI by a Party with the PHI received by a Party in its capacity as a Business Associate of a HIPAA covered entity, to permit data analyses that relate to health care operations of the respective covered entities.

d. “Designated Record Set” has the same meaning as the term “Designated Record Set”, as defined in 45 C.F.R. § 164.501.

e. “Electronic Protected Health Information” or “Electronic PHI” means information that comes within paragraphs 1(i) or 1(ii) of the definition of “Protected Health Information”, as defined in 45 C.F.R. § 160.103.

f. “Individual” has the same meaning as the term “Individual”, as defined in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502.

g. “Medicaid Confidential Data” means any information or data derived from the Medicaid Analytics Performance Portal maintained by DOH about individuals who have applied for or receive Medicaid benefits, including Medicaid claims data, names and addresses, diagnoses, medical services, and other personally identifiable health information.

h. “Protected Health Information” or “PHI” has the same meaning as the term “Protected Health Information”, as defined in 45 C.F.R. § 160.103. “Protected Health Information” includes without limitation “Electronic Protected Health Information” as defined above.

i. “Security Incident” has the same meaning as the term “Security Incident”, as defined in 45 C.F.R. § 164.304.

j. “Statewide Health Information Network of New York” or “SHIN-NY” means the set of agreements (and the transactions, relations and data that are created by and through such set of agreements), between the New York State Department of Health, the New York eHealth Collaborative, Inc., HealtheConnections and other health information organizations and their participants, to make possible the exchange of clinical information among authorized users for authorized purposes to improve the quality, coordination and efficiency of patient care, reduce medical errors and carry out public health and oversight activities, while protecting privacy and security.

k. “SHIN-NY Policy Guidance” means a set of policies and procedures, including technical standards and SHIN-NY services and products that are approved by the New York State Department of Health, related to the operation of the SHIN-NY.

l. “Subcontractor” has the same meaning as the term “Subcontractor”, as defined in 45 C.F.R. § 160.103.

m. “Underlying Contract” means any existing or future agreement entered into by and between Vendor and HealtheConnections.

n. “Unsecured Protected Health Information“ or “Unsecured PHI” has the same meaning as the term “unsecured protected health information” as defined in 45 C.F.R. § 164.402.

3. Obligations of the Parties With Respect to PHI.

3.1 Obligations of Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate agrees to:

a. Not use or disclose the PHI other than as permitted or required by this BAA or the Underlying Contract or as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Beneficiary is required to disclose such information or as otherwise permitted under the SHIN-NY Policy Guidance, or the HIPAA Rules.

b. Implement and use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this BAA. Without limiting the generality of the foregoing sentence, Business Associate will:

(i) Implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI as required by the HIPAA Rules;

(ii) Ensure that any agent, including a subcontractor, to whom Business Associate provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect Electronic PHI; and

(iii) Promptly (but in no event later than 15 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) thereof) report to Beneficiary any Security Incident of which Business Associate becomes aware. Any notice of a Security Incident shall include the identification of each Individual whose Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Security Incident as well as any other relevant information regarding the Security Incident, in each case to the extent such information is available to Business Associate and promptly after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) thereof) such information becomes known to Business Associate.

Notwithstanding, the Parties agree that for purposes of this Subsection 3.1.b(iii), it shall not be necessary to report Unsuccessful Security Incidents (as defined below) unless requested by HealtConnections. “Unsuccessful Security Incidents” shall include, but not be limited to, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-in attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

c. Promptly report to Beneficiary, and mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any use or disclosure of PHI by Business Associate in violation of the requirements of this BAA and/or any Security Incident or Breach, and take steps to avoid any further similar violating uses or disclosures and/or Security Incidents or Breaches.

d. Report to Beneficiary any Breach of Unsecured PHI immediately after (but in no

event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach) the discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach and provide to Beneficiary notice of all of the elements specified in 45 C.F.R. § 164.404(c) (to the extent such information is available to Business Associate) promptly after (but in no event later than 10 days after discovery (as defined in 45 C.F.R. § 164.410(a)(2)) of such Breach) such information becomes known to Business Associate, including, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during such Breach. Business Associate shall cooperate and assist Beneficiary, at no cost to Beneficiary only to the extent such Breach is caused by or resulting from the acts or omissions of Business Associate, its subcontractors or agents, in making notification as required by law in the event of a Breach due to Business Associate.

e. Business Associate shall cooperate and assist Beneficiary in the reasonable investigation of any violation of the requirements of this BAA and/or any Security Incident or Breach at no cost to Beneficiary to the extent such violation, Security Incident and/or Breach is caused by or resulting from the acts or omissions of Business Associate, its subcontractors or agents.

f. Ensure that all of its subcontractors and agents that receive, use, or have access to PHI agree, in writing, to restrictions and conditions on the use and/or disclosure of PHI that are consistent with those that apply through this BAA to Business Associate with respect to such information. Beneficiary acknowledges that such writing may differ in form, but will not differ in substance from this BAA. If Business Associate becomes aware of a pattern of activity or practice of a subcontractor or agent that would constitute a material breach or violation of the subcontractor's or agent's obligations under such writing, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement, if feasible.

g. At the request of Beneficiary, Business Associate shall make available to Beneficiary or, as directed by Beneficiary, to an Individual, in a reasonable time and manner, access to PHI in a Designated Record Set in its possession related to the Individual to the extent required to comply with 45 CFR § 164.524 and the SHIN-NY Policy Guidance. If Beneficiary is required to provide access to PHI in a Designated Record Set in a specific format, Business Associate will provide access to PHI in such format to the extent Business Associate maintains PHI in such format in accordance with Section 13405(e) of the HITECH Act.

h. At the request of Beneficiary or the Individual, Business Associate shall make PHI or a record in a Designated Record Set available for amendment and to incorporate any amendments to said PHI or record in a reasonable time and manner in accordance with 45 CFR § 164.526 and/or Beneficiary's policies and pursuant to SHIN-NY Policy Guidance.

i. Subject to attorney-client and any other applicable legal privilege, make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, available to the Secretary of the U.S. Department of Health and Human Services ("HHS") or his/her designee, in the reasonable time and manner specified by the Secretary, for purposes of the Secretary determining compliance with the HIPAA Rules. Subject to the legal privileges referred to above and as otherwise permitted by law, Business Associate shall, within 15 business days after receipt of such request, notify Beneficiary of any request for access by HHS and shall provide Beneficiary with a copy of the HHS request for access and all materials to be disclosed pursuant thereto.

j. Document disclosures as required under HIPAA and information related to such disclosures to make available to Beneficiary or Individual an accounting of disclosures as required pursuant to 45 CFR § 164.528.



k. Comply with HITECH as applicable to Business Associate.

l. To the extent Business Associate is required to carry out Beneficiary's obligations under 45 C.F.R. Part 164 subpart E, comply with the requirements of such subpart that apply to Beneficiary in the performance of such obligations, including, but not limited to, minimum necessary and document retention standards.

m. In receiving, storing, processing, or otherwise dealing with any "patient identifying information" or "records" as defined in 42 C.F.R. § 2.11, from an alcohol/drug abuse "program," as defined in 42 C.F.R. § 2.11, that is federally assisted in a manner described in 42 C.F.R. § 2.12(b), and that is operated by Beneficiary, to be fully bound by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, as applicable.

n. Resist in judicial proceedings any efforts to obtain access to "patient identifying information" or "records" as defined in 42 C.F.R. § 2.11 and as maintained by Business Associate, other than as permitted by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

o. Comply with all applicable federal and state laws and regulations governing the confidentiality of information provided by Beneficiary including, without limitation, New York Public Health Law §§ 18 (Access to Patient Information) & 2780 et seq.; New York Mental Hygiene Law §§ 22.05 & 33.13; New York Civil Rights Law § 79-l; New York General Business Law §§ 399-dd (Confidentiality of Social Security Account Number), 399-h, & 899-aa; New York Civil Practice Law and Rules (CPLR) §§ 2302(a), 4504, 4507, 4508, & 4510 and CPLR R. 3122(a); chapter 5 of title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR); 10 NYCRR § 63.6(k); Federal Rules of Evidence R. 501; and 21 C.F.R. § 1304.24(d).

p. Pursuant to New York General Business Law § 899-aa(2)&(3) and in conformity with paragraph 3.1(a) of this BAA, within 15 days' after discovery thereof, notify Beneficiary of any "breach of the security of the system," as defined in New York General Business Law § 899-aa(1)(c), that involves PHI containing individuals' "private information," as defined in New York General Business Law § 899-aa(1)(b), that was, or was reasonably believed to be, acquired from Business Associate by a person without valid authorization.

q. In the event Business Associate chooses to destroy the PHI in its possession in compliance with this BAA, and that PHI contains "personal identifying information" as defined in New York General Business Law § 399-h(1)(d), dispose of such information in conformity with New York General Business Law § 399-h(2).

3.2 Permitted Uses and Disclosures of PHI by Business Associate. Except as otherwise specified in this BAA, Business Associate may use and disclose the PHI as reasonably necessary to perform its obligations under the Underlying Contract, provided that such use or disclosure does not violate the HIPAA Rules, SHIN-NY Policy Guidance, or other applicable rules. Unless otherwise limited herein, Business Associate may:

a. Use the PHI in its possession for its proper management and administration, and to carry out the required legal responsibilities of Business Associate.

b. Disclose the PHI in its possession to a third party for the purpose of Business

Associate's proper management and administration or to carry out the legal responsibilities of Business Associate, provided that the disclosures are required by law or Business Associate obtains written assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Such written assurances shall include adherence to the same restrictions and conditions on use and disclosure as apply to Business Associate herein. Beneficiary acknowledges that such written assurances may differ in form, but will not differ in substance, from this BAA.

c. Provide Data Aggregation Services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B) and the Underlying Contract.

d. Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1). To the extent permitted by applicable law, prior to disclosing PHI as required by law to a law enforcement, regulatory, administrative, or oversight agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, Business Associate shall notify Beneficiary of such pending disclosure and provide reasonable time for Beneficiary to oppose such disclosure, should Beneficiary deem such opposition necessary; provided, however, that if Beneficiary does not respond to Business Associate regarding such opposition prior to the date on which such disclosure must be made, Business Associate may, in its own discretion, disclose PHI as required by law.

3.3 Prohibited Uses and Disclosures of PHI by Business Associate. Business Associate shall neither use nor disclose Protected Health Information except as permitted or required by this BAA. Specifically, without limitation, this BAA does not authorize Business Associate to:

- a. Sell Protected Health Information for any purpose;
- b. Use or disclose Protected Health Information for Marketing purposes; or
- c. Offshore any PHI.

3.4 Obligations of Beneficiary. By acceptance hereof, Beneficiary agrees:

a. To notify Business Associate of any restriction, or change in any restriction, to the use or disclosure of Protected Health Information that Beneficiary has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

b. To notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

c. Not to request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Beneficiary.

#### 4. Medicaid Confidential Data

- a. HealtheConnections is covered under a Data Use Agreement (DUA) with DOH

regarding storage and transmission of MCD. The Parties understand and acknowledge that this Section 4 only applies if a Party shall be given access to MCD from or through the other Party in the course of the Underlying Contract.

b. The Federal Center for Medicare and Medicaid Services (CMS) requires that all contracts and/or agreements executed between the Department of Health and any second party that will receive MCD must include contract language that will bind such parties to ensure that contractor(s)/business associates abide by the regulations and laws that govern the protection of individual, Medicaid confidential level data. This notification requires that you include the following language in this contract and all future contracts that will govern the receipt and release of such confidential data:

*Medicaid Confidential Data/Protected Health Information (MCD/PHI) includes all information about a recipient or applicant, including enrollment information, eligibility data and protected health information. You must comply with the following state and federal laws and regulations:*

- *Section 367-b(4) of the NY Social Services Law*
- *New York State Social Services Law Section 369 (4)*
- *Article 27-F of the New York Public Health Law and 18 NYCRR 360-8.1*
- *Social Security Act, 42 USC 1396a (a)(7)*
- *Federal regulations at 42 CFR 431.302, 42 CFR Part 2*
- *The Health Insurance Portability and Accountability Act (HIPAA), and HITECH at 45 CFR Parts 160 and 164*
- *Section 33.13 of the New York State Mental Hygiene Law*
- *SHIN-NY Regulation: 10 NYCRR Part 300.*

*Please note that MCD released to you may contain AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law. As required by New York Public Health Law Section 2782(5)(a), the following notice is provided to you:*

*"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure."*

*Alcohol and Substance Abuse Related Confidentiality Restrictions:*

*Alcohol and substance abuse information is confidential pursuant to 42 CFR Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.*

*You agree to ensure that you and any agent, including a subcontractor/business associate, to whom you provide MCD/PHI, agrees to the same restrictions and*

*conditions that apply throughout this Agreement. Further, you agree to state in any such agreement, contract or document that the party to whom you are providing the MCD/PHI may be required to provide their Business Associate Agreements to DOH and may be required to receive acknowledgement or written agreement from DOH prior to redisclosing the MCD. You agree to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that you enter into that involves MCD/PHI.*

*Any agreement, contractor or document with a subcontractor/business associate must contain all of the above provisions pertaining to confidentiality. It must contain the HIV/AIDS notice as well as a statement that the subcontractor/business associate may not use or disclose the MCD without the prior written approval of DOH.*

*Any MCD provided under this Agreement shall not be accessed by employees, agents, representatives, or contractors/business associates who are located outside of the United States and its territories (offshore). Further, MCD shall not be received, stored, processed, or disposed via information technology systems which are located offshore.*

*Neither Party nor any further subcontractor may use or disclose MCD without the prior written approval of the NYS Department of Health.*

5. Term and Termination.

a. Termination Generally. This BAA shall be effective as of the Effective Date of the Agreement and shall continue until the Agreement terminates.

b. Termination. Upon learning of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligation under this BAA, Beneficiary may either: (i) Provide Business Associate with notice of and the opportunity to cure the breach or end the violation, as applicable, within a reasonable period of time but not later than twenty (20) days from notice and, if such steps are unsuccessful, terminate the Underlying Contract and this BAA, if feasible; or (ii) Terminate the Underlying Contract and/or this BAA immediately, if feasible.

c. Judicial or Administrative Proceedings. Either Party may terminate this BAA, effective immediately, if (i) the other Party is named as a defendant in a criminal proceeding for a violation of the Privacy Rule or (ii) a finding or stipulation that the other Party has violated any applicable HIPAA Rules or SHIN-NY Policy Guidance is made in any administrative or civil proceeding in which the Party has been joined.

d. Obligations upon Termination. Business Associate shall, at the termination of this BAA, if feasible, return or destroy all PHI received from, or created or received by Business Associate on behalf of Beneficiary that Business Associate still maintains in any form and retain no copies of such information. In the event that Business Associate determines that such return or destruction of PHI is infeasible, Business Associate shall provide to Beneficiary notification of the conditions that make return or destruction infeasible and extend the protections

of this BAA to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. The provisions of this Section shall survive termination or expiration of this BAA for any reason.

6. Indemnification. Subject to any limitations set forth in the Underlying Contract, each Party agrees to indemnify the other Party and its officers, directors, employees, agents, and subsidiaries for any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees and costs asserted or incurred in connection with the indemnifying Party's (a) failure to perform its obligations under this BAA; (b) willful misconduct, negligent acts or omissions in carrying out the obligations under this BAA; or (c) the Party's violation of any applicable HIPAA Rules or SHIN-NY laws, regulations, or SHIN-NY Policy Guidance. This indemnification obligation will survive the termination of this BAA.

7. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for the Parties to comply with the requirements of the HIPAA Rules and other applicable law or regulation.

8. Illegality. In the event that any provision of this BAA is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this BAA will remain in full force and effect.

9. No Third-Party Beneficiaries. This BAA is intended for the sole benefit of Beneficiary and Business Associate and does not create any third party beneficiary rights, except as required under the HIPAA Rules, SHIN-NY Policy Guidance and as set forth in the DUA, as applicable.

10. Record Retention. Business Associate shall retain all records required to be created or retained under this BAA for a period of no less than six (6) years following the date of termination of this BAA, and/or the Underlying Contract, as applicable, whichever is later.

11. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with applicable HIPAA Rules and the SHIN-NY laws, regulations, and SHIN-NY Policy Guidance, and the obligations imposed by the DUA, as applicable. The Parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules, the SHIN-NY laws, regulations and SHIN-NY Policy Guidance and the DUA, as applicable.

12. Independent Contractors. Notwithstanding any provision contained herein to the contrary, each of Vendor and HealtheConnections understand and agree that the parties hereto intend to act and perform as independent contractors and that therefore neither Vendor nor HealtheConnections is an employee, partner, joint venturer, of the other. Nothing in this BAA shall be construed as placing the parties in a relationship of employer-employee, partners or joint venturers. Neither Vendor nor HealtheConnections shall have the right to make any promises, warranties or representations, or to assume or create any obligations, on behalf of the other party, except as otherwise expressly provided herein. Vendor and HealtheConnections agree to be solely and entirely responsible for their respective acts and, to the extent provided under the laws, for the acts of any of their respective officers, directors, employees, professional advisors (including accountants), contractors and other agents, except as otherwise expressly provided herein.

[End of Attachment]



## **Attachment 2 General Terms and Conditions**

Capitalized terms not defined herein have the meaning set forth in the HADV to which this is attached.

### **1. INTEGRATION/ACCESS TO HeC'S SYSTEM**

**1.1** All interfaces and updates provided under the Agreement shall have been thoroughly tested and all interoperability, security, or other issues resolved before they are implemented. Vendor will work with HeC to test compatibility and ensure configurations are functional ("Integration Testing"). Integration Testing shall be deemed to be complete once the Integration has been certified as acceptable by both HeC and Vendor.

**1.2** The Parties agree to conform interfaces and methods of interoperability to agreed upon data exchange specifications, and will assign appropriate staff to implement and monitor data exchange methods. The Parties will inform each other of any scheduled or unscheduled downtime relating to data exchange as soon as reasonably possible.

### **2. SCOPE OF SERVICES/PERFORMANCE**

**2.1** The performance of the Services shall in no manner and to no extent cause HeC to suffer any permanent and irrevocable loss, corruption, alteration, or destruction of HeC's data, hardware, or software ("HeC's Data") with which Vendor interacts in the performance of the Services, or cause any failure in security.

**2.2** The Vendor shall employ appropriate system testing and quality assurance measures to ensure the accuracy, reliability, and integrity of the Integration and Services, and shall report the findings of such testing to HeC. The Parties agree to work together to determine the source of performance problems and to resolve such problems.

### **3. PRIVACY AND SECURITY**

**3.1 Compliance with Laws and Regulations.** Parties shall comply with the standards for the confidentiality, security, and use of patient health information, including HIPAA, the HITECH Act, the regulations and guidance governing the SHIN-NY, and all other state and federal laws. Vendor is fully bound by the provisions of 42 C.F.R. Part 2 upon receipt of patient identifying information. Vendor shall retain records related to the subject matter of this Agreement: (a) through the end of the sixth full calendar year after the end of the last fiscal year of Vendor during which any Services are being provided by Vendor to HeC through a SOW, or (b) if longer, such period as is required by applicable laws.

**3.2 Security.** Vendor agrees to maintain an information security program, including third party certification appropriate for the Services, and shall implement security measures in accordance with applicable law and according to these terms. Should Vendor nor any of its professional staff become subject to an audit, investigation or review by the New York State Department of Health, the United States Department of Health and Human Services Office of the Inspector General, the New York State Deputy Attorney General for Medicaid Fraud, the New York State Medicaid Inspector General or any other regulatory, investigatory, or prosecutorial agency, Vendor shall notify HeC immediately.

**3.3 Viruses.** Each Party represents and warrants that the software and services it provides (and any portions thereof) do not and shall not in the future contain any timer, clock, counter, keylock, or other limiting design, routine, device, or other mechanism that cause or could cause the HeC System, Vendor's system, or the Services (or any portion thereof) to become erased, inoperable, impaired, or otherwise incapable of being copied or used in the full manner for which it was designed or required to be provided hereunder (collectively, "Disabling Technology"). In the event of a breach of this provision, the Vendor shall not use or permit any of the Disabling Technology to be used and shall, at the Vendor's sole expense, promptly remove the Disabling Technology and take all other action necessary to comply with this provision.

#### **4. RIGHTS IN DATA**

The parties acknowledge that, other than as specifically set forth in this Agreement: (i) nothing in this Agreement transfers, creates, grants or gives intellectual property rights of one party to the other party; or (ii) creates rights to Data outside of rights granted to one party by a Participant, or otherwise granted to one party by the source of the Data under separate agreements between the Participant and the party or Data source and the party, respectively.

#### **5. CONFIDENTIAL INFORMATION**

**5.1** In connection with the performance of this Agreement, Vendor and HeC, its respective officers, representatives, employees and any permitted subcontractors (collectively the "Authorized Persons"), each of whom shall only be allowed access to the Information (as defined herein) on a "need to know" basis shall retain all information gathered, developed, or communicated to the Authorized Persons by the disclosing party in connection with the work performed hereunder (the "Information") in a strictly confidential manner, whether or not identified as confidential by the disclosing party. Both Parties agree that neither they nor the Authorized Persons will duplicate, distribute, disclose, use or otherwise provide the Information to anyone without prior written authorization of the disclosing party.

**5.2** Notwithstanding any other provision hereof, nothing in this Section 5 (Confidential Information) shall prohibit or be deemed to prohibit a Party hereto from disclosing any Confidential Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that such Party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction, and such disclosures are expressly permitted hereunder; provided, however, that a Party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction shall provide the other Party with notice thereof within five (5) calendar days, or, if sooner, at least three (3) business days before such disclosure will be made so that the other Party may seek a protective order or other appropriate remedy. In no event shall a Party be deemed to be liable hereunder for compliance with any such subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction.

#### **6. EXCLUSION OF WARRANTIES**

THE VENDOR AND HeC ACKNOWLEDGE THE INFORMATION SHARED BY VENDOR AND HeC PURSUANT TO THIS AGREEMENT IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES,

INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF INFORMATION OR DATA, BODILY INJURY, OR OTHER THIRD-PARTY LIABILITIES. EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS OR LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS.

## **7. GENERAL PROVISIONS**

**7.1 Applicable Law/Venue.** The interpretation of these Terms and Conditions and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of New York. With respect to any legal action, suit or proceeding by a Party arising out of this Agreement, each Party consents to the exclusive jurisdiction and venue of a United States District Court in the State of New York.

**7.2 Third-Party Beneficiaries.** Except as may be provided for in this Agreement, there shall be no third party beneficiaries to this Agreement.

**7.3 Relationship of the Parties.** This Agreement shall not establish or be interpreted as establishing a joint venture, franchise, employer-employee relationship, or any other agency relationship between Vendor and HeC. Vendor and HeC are independent contracting entities.

**7.4 Force Majeure.** Neither Party will be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, act of God, or governmental action (each a "Force Majeure Event"); provided, however, that a party may not rely on this provision if it has not maintained or implemented procedures as required by this Agreement.

**7.5 Severability.** Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of this Agreement.

**7.6 Waiver.** No provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

**7.7 Survival of Provisions.** The provisions of Sections 3,5 and 6 shall survive termination of this Agreement.

[End of Attachment]